

A ¹²⁴
LETTER
TO

The Reverend
Mr. *William Higden.*

On Account of his

*View of the English Constitution, with Re-
spect to the Sovereign Authority of the
Prince, &c.*

*In Vindication of the Lawfulness of Taking
the Oaths, &c.*

By a NATURAL BORN SUBJECT.

*Thou shalt not follow a Multitude to do Evil: Nei-
ther shalt thou speak in a Cause, to Decline after
Many, to Wrest Judgement. Exod. xxiii. 2.*

*I Counsel thee to keep the King's Commandment, and
that in Regard to the Oath of God. Eccles. viii. 2.*

*Because Iniquity shall Abound, the Love of many shall
wax Cold. But he that shall Endure unto the End,
the same shall be Saved. Matth. xxiv. 12, 13.*

LONDON Printed, and Sold by J. Morphew
near Stationers Hall, 1709.

Price Unbound 1 s.

A

LETTER

OT

The Reverend

Mr. William Higdon.

On Account of the



THE UNIVERSITY OF CHICAGO

and Sold by J. M. Chapman

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yet Perswades Com-
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A

LETTER

TO

The Reverend

Mr. *William Higden.*

SIR,

YOU bespeak in your *Preface* great
Charity and Moderation in those who
 shall Answer you. But not without
 a *Sting* if they come too near,

Animasque in Vulnere ponunt.

Yet, Sir, I must venture, and freely tell you
 wherein I think you have overshoot the Mark.

You are come into the Government. But up-
 on what Terms? You once thought it all a
Wickedness and Usurpation. And have you Al-
 ter'd your Mind? No. You still think it was so.
 But you have found Reasons that notwithstand-

B

ing

ing all that you ought to Comply with it. So that this is no Justification of the *Government*, but only of your own *Compliance*. And you are as Free to part with it to Morrow, if it keep not its Ground, and Comply again with whatever shall Rise up in its Place. It cannot Sink down with me how any Man can be Hearty to Support that which he thinks a *Wickedness*!

Therefore the Government is not beholding to any *Convert* who shall come in otherwise than upon *Revolution-Principles*. For tho' he may Satisfy himself in it, yet if his Arguments prevail he will Unsettle Thousands. I will not be so Uncharitable to Suppose you had this in your Design. But however it has the same Effect. And I think I may set this down as a Certain Rule, That whoever Sticks still to his Old *Passive Obedience* Doctrin, cannot be a true Friend to the *Revolution*.

And this Appears in that *Unwillingness* with which these Men come in. And they go not an Inch farther than just they must for that time. Thus those who took the first *Oath* with a *Declaration* shew'd that something Stuck with them. And what was that? They wou'd not be thought to *Abjure* the *Right* of the *Dispossessed* Prince. But I think he who *Marries* one *Wife* does *Abjure* all others. However they wou'd not have it so, and freely Declar'd against any *Abjurati-
on*. Doctor *Stillingsfleet* Wrote against it, and Made it not only *Insignificant* but *Sinful*. But he Liv'd not till it was *Impos'd*, so we know not what he wou'd have done. But there were those who *Voted* and *Argued* against it as *Unlawful*, and yet took it as soon as the Major *Vote* Carry'd it to be *Lawful*. I

I observe that these Men draw not the *Conclusion* from the *Premises*; but first they fix a *Conclusion*, and then find out *Premises* that will Answer to it. Thus Dr. *Sherlock* having nothing in his View but the first *Short Oath of Allegiance*, Adapted his Arguments accordingly, and tho' he made it Lawful to Comply with the Government, yet he Reserv'd a *Right* in the *Dispossessed* Prince, which he might Recover if he cou'd. And made a Distinction between a *Right by Possession*, a *Legal Right*, and a *Right by Inheritance*.

But the *Abjuration* Disclaiming any *Right whatsoever*, you, Sir, were forc'd to come up to this, if you wou'd Comply.

Well, I must say it of the *Clergy*, whether *Compliers*, or *Non-Compliers*, whether it may be to their Justification or not, That they came in with the worst Grace of any, they were brought to the *Oaths* as a Bear to the Stake, and have the least Share in the Merit of the *Revolution*. Which they said wou'd otherwise have overturn'd the *Church*, as was done in *Scotland* for the same Reason. Besides that most now, being then young, took all upon Trust.

You told us, Sir, in your *Preface* of the *Success* your Papers met with while in *MSS.* which Encourag'd you to *Print* them. This made us hope for a plentiful Harvest of the *Nonjurors* who wou'd have follow'd your Example. But as yet we see very little of it, and you seem to Stand Alone.

But if they come in upon your *Principle*; they had as good stay where they are. For I must tell you, That no Friend of the *Government*

ment, neither *Whig* nor *Tory*, are Pleas'd with it. They think it Calculated only for *Time-servers* and *Trimmers*, to whom none are *Criminal* but the *Unfortunate*

Title by *Inheritance*, *Election*, or *Conquest* in a just *War*, or *Possession* where none claims a better *Right*, all these we have heard of, and they are *Intelligible*. But bare *Possession* without *Right*, and against the *Right Heir Claimant*, and Obtain'd by *Manifest Injustice*, and contrary to the *Laws of God and Man*, is the most *Unaccountable* of any *Plea* ever was Advanc'd, and an *Affront* to any *Government* that is Supported by it, and not likely to gain *Ground*, while the *Notion of Right and Wrong* remains among *Men*! What! For *Right* to become *Wrong*, only because it Suffers *Wrongfully*! And *Wrong* to become *Right* by being still more *Wrong*, and *Improving in Wickedness*, without *Repentance*, and being tully *Harden'd*, after *Killing* to take *Possession*! Does this purge *Defects*, and set all *Right* again!

You set up the *Crown* like the *Goal* to *Prison-base*, the best *Runner* carries it. That if a *Jack Straw* with his *Mob* shou'd *Surprize Whitehall*, *Seize the King*, and *Usurp the Government*, it is all his own, he has Gain'd your *Goal of Possession*, and the *Right of the Lawful King*, and his *Heirs* is *Extinguish'd for Ever*! So that the *King* wou'd be a *Rebel* against *Jack Straw*, if he Sought to *Recover his Right*! But if he did *Recover* it, he might *Hang King Jack* for a *Traitor*! Every thing *Jack* did was *Treason* by the *Law*, and yet for *Doing* it, the *Law* *Indemnifies* him, and gives him the whole *Kingdom* for his *Pains*! Yet do's not *Indemnify* him

him because it may Hang him for it afterwards! Sir, this is a Contemptible Notion of the *Law*. And the *Revolution* and the *Title* of the *Queen* which Depends upon it, needs no such *Defences* as these. The *Whiggs* whom you despise, despise such a *Plea* as this. They never said, ther might not be a *Prevailing Wickedness*, and that *Justice* was to be Measur'd by *Success*.

You make the *Revolution* an *Iniquity* Establish'd by *Law*. And therefore plead Submission to it. Which looks not like good *Divinity*, whatever *Law* ther may be in it. But I will not Prejudge.

Thus much in the general. I now come to your *Arguments*, which I will endeavour to understand if I can. Towards which I shall want your Help in the following Particulars.

1. To know what you mean by the *Constitution*? You make this your whole *Foundation*. And therefore it is necessary it shou'd be Distinctly and Clearly understood.

There are many *Frames* or *Constitutions* of *Government* in the World. And the same *Country* has undergone several *Frames*. Is it your Meaning then, That no *Frame* or *Constitution* of *Government* ought to be Submitted to but that which was first Establish'd?

Or, *Secondly*, no *Alteration* in the *Constitution* but what was Regularly and Fairly made by the *Constitution* it self?

Or, *Thirdly*, That a *Constitution* once Settled, is to be Obey'd, however Wrongfully it was brought in?

I will presume for several Reasons that you will pitch upon the *Third*. And that you will allow of *de Facto Constitutions*, as well as *de Facto Kings*.

2. Then the next thing is to know what you mean by *de Facto* and *de Jure*? In your Book you make *de Facto* to be always *de Jure*. So here is a *Distinction* without a *Difference*.

3. The third thing I wou'd know, is, Whether you make *Precedents* (which you take for your Argument) a Substantial *Rule* in all Cases? Otherwise they may be none in this.

This, Sir, is a short View of your *Hypothesis*, and of your *Defence* of it.

(1.) I will begin with the *Constitution*. And by this I suppose is to be Meant something *Standing* and *Perpetual*, which is not to be *Chopp'd*, or *Chang'd*, or *Alter'd*; but to Remain *Firm* and *Intire* it self, tho' it can *Change* all other things, all our *Laws*, *Customs*, and *Inferior Constitutions*. It is the *Primum Mobile*, *Unmov'd* it self, but setting every thing else in Motion. The *Fountain* whence all *Laws* and *Subordinate Authority* in the Nation flows. The *Streams* may take different *Channels*, but the *Fountain* still Remains the same.

1. And this is no other than the *Legislative Authority*, which is ty'd to no *Law*, but may *Enact* and *Repeal* at Pleasure. For the *Law* is nothing else but the Declar'd *Will* and *Pleasure* of the *Legislature*.

2. And this I suppose in *England* is Generally Understood to be in the *King* and the three *Estates*, that is, 1. The *Lords Spiritual*, 2. The *Lords Temporal*, and 3. The *Commons*.
These

These are our *Constitution* in *Conjunction* with the *King*, and without these no *Law* is to be made. Thus it stands now.

3. But then we must say, *That from the Beginning it was not so.* For *Parliaments* were not from the *Beginning*. They were Call'd by *Kings*, and all the *Authority* that they have is Deriv'd wholly and solely from the *Crown*. So that they are not the *Original* and *Fountain* **CONSTITUTION.**

It is Certain that the Whole *Legislative* Authority in *England* was once in the *Crown*, as well as the *Property* in all the *Lands*. And to this Day all *Lands* are held of the *Crown*, and all the *Authority* as well *Parliamentary* as any other *Civil* Authority is Deriv'd from the *Crown*, and from it only.

GOD made *Kings*, and *Kings* made *Parliaments*.

4. Let no Man here Mistake me, as if I was speaking against *Parliaments*, No, I think them an Excellent Constitution; for in the *Multitude of Councillers ther is Safety*. And it is most Happy when the Publick Affairs are Carry'd on with the most Universal Consent and Agreement.

But as the *Corruption* of the *Best* things is the *Worst*, so when *Parliaments* Degenerate from their *Original Constitution*, they become the Authors of the Greater *Mischief*. And we speak not by *Guess*, but from Dear-bought *Experience*. The *Parliament* of *Forty One* began at first to *Contrast* with the *King*, and

Dispute his *Authority*. Then they set themselves up as a Power *Co-Ordinate* and upon the Level with him: And at last they Asserted an Authority over him, to Judge and Condemn him. The Prevailing *Faction* in that House of *Commons*, having first Grabled their own House, and Secluded the Loyal Members, got the first of the three *Estates*, the *Bishops*, turn'd out of the House of *Lords*. And soon after Discarded, by their own Authority, all the *Temporal Lords*, and took the whole Government into their own Hands, and Created themselves a *Commonwealth*, thus totally subverting the *Constitution*.

Then it was that any Number of Men getting into *St. Stephen's Chappel*, not only without any *Authority* from the King, but in Direct *Opposition* to him, cou'd *Vote* themselves a *Parliament*, Despising the Old *Rules*, or to *Qualify* themselves according to the known *Laws* then in being, but Men *Attainted* and who had Forfeited their *Lives* to the *Law*, cou'd sit and *Vote* themselves *Acquitted*, and true *Members* of that *House* !

5. Nay, so *Mad* were they in those Times upon the Notion of *Parliaments*, that *Baxter* in his *Saints everlasting Rest*, Printed 1649. p. 83. Describes *Heaven* as a *Parliament*, with their *Speaker*, &c. and instead of the *Kingdom of God*, call'd it *Parliamentum beatum*. And in the *View of the Governments of Europe*, by T. R. Esq; Printed for R. Baldwin. 1689. p. 10. from these Words, *Let us make Man*, he Alludes, That God *Summon'd a Parliament* of

of the Trinity. And I believe ther are many in England who think that a *Parliament* was the first Government in the World. Tho' I know not how they will find it in *Adam*, or where he or *Noah* call'd a *Parliament*. But the *Jesuits*, *Presbyterians*, and all our *Republicans*, such as *Parsons* alias *Doleman* the *Jesuit*, *Knox*, *Buchanan*, *Milton*, *Sidney*, *Lock*, &c. who place the *Original* of Government, in the *People*, and make all to be *Commons* at first, must think that the last Resort of Government is still with them, and that the *House of Commons*, as *Representing* the *People*, have an *Authority* Prior and Superior to *King* or *Lords*. And so indeed they make the *House of Commons* the only *Original* and *Unalterable* CONSTITUTION.

Therefore to Correct these *Excesses* (some of them *Blasphemous*) it can be no Reflection upon the Just and Lawful Authority of *Parliaments*, or the *Priviledges* of the Honourable *House of Commons*, to set this Matter in a Clear Light; it is a *Vindication* of them to be, what they Profess themselves, *His* (or her) *Majesty's* most Dutiful and Loyal Subjects.

6. The *Lords* and *Commons* are now Part of our Constitution. But they are not the *Foundation* Constitution. The *Lords* are all made by the *King*, and were his *Great Council* long before the *Commons* were taken in. Which was not (as Doctor *Brady* says, in his *Introduction to the Old English History*. Printed 1684.) before the 49th of *Hen. III.* For in his *Short Introduction* to that *Book* he Affirms and Undertakes to Prove these two things,

“ 1. That the *Commons of England* Represented by *Knights, Citizens, and Burgeses* in *Parliament*, were not Introduced, nor were one of the *Three Estates* in *Parliament* before the 49th of *Hen. III.*

“ 2. I affirm (*says he*) that before that time, the *Body* of the *Commons of England*, or *Freemen* (as now Understood, or as we now frequently call them) Collectively taken, had not any *Share* or *Votes* in making of *Laws* for the *Government* of the *Kingdom*, nor had any *Communication* in *Affairs* of *State*, Unless they were Represented by the *Tenants in Capite*.

The *Doctor* was *Keeper* of the *Records* in the *Tower*, and Quotes the *Parliament Rolls*, which are the *Fountain Proof* in this Case. And I hear not that he has been Detected in any false *Quotations*,

7. After the *Commons* were thus taken into *Parliament*, it was a long Time before they were Settled, and their *Elections* Regulated in that *Form* as now, or their *Authority* so Ascertain'd or thought *Necessary*. These things came by *Degrees*. The *Doctor* p. 152. sets down at large a *Writ* of *Summons* to *Parliament*, 21 *Edw. I.* Wherein the *Sheriffs* were Commanded to Return the same *Members* that serv'd in the Preceding *Parliament*, and to make New *Elections* only where any of these Old *Members* were *Dead* or Disabled by *Sickness*.

And

And p. 151. ther are other *Writs* Commanding the *Sheriffs* to Return *two Knights* besides the *two* that were first Return'd. So that at that time the *King* was not Limited to any Certain Number of *Knights*. And p. 161. The *Writ* Commands but one *Knight* to be Return'd for a *County*, one *Citizen* for a *City*, and on *Burgeses* for a *Burgh*; and the *Names* of those to be Return'd are set down in the *Writ*, so that the *King* then had the Naming of them, when he thought fit. And in Dr. *Brady's Continuation*, in the Reign of *Edw. 1.* p. 96. he Quotes the *Parliament Rolls*, where *four Knights* were Summon'd from every *Country*. And p. 98. one or two *Burgeses* to be Return'd, as the *Burgh* was Greater or Lesser. So that at that time ther was no Fix'd *Rule* for the *Election* of *Parliament Men*, and it was left wholly almost in the *King's* Breast.

And any Dispute about *Elections* or the *Right* of *Elections* was Determin'd by the *King* and *Council* in the time of *Edw. II.* of which ther is a plain Proof in *Brady's Introduction* p. 37, 38.

8. And as the *Elections* were in this Condition, so the Necessity of the Consent of the *Commons* in *Parliament* to the making of *Laws*, or even as to the Rasing of *Money*, was not then known or taken for a General *Rule*. For ther were several *Acts* of *Parliament* made without the *Commons*, even after *Hen. III.* as Dr. *Brady* shews all were before. See the *Appendix* to his *Introduction* p. 49. &c. Of the
Great

Great Councils and Parliaments before and after the Conquest.

Our Ancient Kings did *de Jure* Tax their Demeasns. *Introduet.* p. 180.

The City of London Tax'd by the King with the Advice of the *Privy Council.* p. 178.

He gives a long Quotation out of *Spelman's Glossary* upon the word *Parliament*, beginning at p. 231. And you find *Spelman* making this Observation, p. 232. *Nusquam me reperisse inter SAXONES Nostros PLEBI locum.* That in all the *Saxon Parliaments* ther were none of the *Commons.*

Then coming to the *Normans*, he says, p. 233, 234. That *William the Conqueror* gave all the *Lands* among his *Great Men* (the *Normans*) *terram totam inter Magnates Suos sic disposuit*, that the *Great Men*, or the *Magnates*, held of the King *per Baroniam*, in *Capite*, that is, from the *Head* the King, whence they were Call'd the *King's Barons* or the *Barons* of the *Kingdom.* And these *Barons* gave the *Lands* to others under them, to hold of them in *Military Service*, and those again to *Tenants* under them for *Agriculture*, or what we call *Soccage.* The *Barons* in their *Courts* had full Authority over all these under them, to Decide all *Controversies* among them, and give them *Laws.* And the King with the Advice and Consent of his *Barons*, made *Laws* for the whole *Kingdom.* And *Spelman* says, *Ludunt qui Parliamenta Nostra in his quaerunt.* It is a Jest to seek for our *Constitution* of *Parliaments* in those Times.

And

And he Adds, *Collegisse me Centenas*—— That of about a Hundred Great Councils (or *Parliaments*, if we will call them so) which he had Collected from the beginning of *Wilk. I.* to the end of *Hen. III.* he cou'd not find any thing *de Plebe*, of the *Commons*, among them all.

Then he speaks of the *Charter* of King *John*, which the *Rebellious Barons*, having Subdu'd him, Forc'd him to Sign, wherein he Grants, that he wou'd not impose any *Tax* but by the *Common Council* of the *Kingdom*, for the Word *Parliament* was not then in use. Yet in this *Charter* (which Sir *Henry Spelman* said he had seen) that the *King* might not seem to part with his whole *Prerogative*, ther are *Three Cases* Reserv'd wherein he did not Divest himself of the Power to Raise *Taxes* without Consent of this *Common Council*. 1. To redeem his Person. 2. To make his Eldest Son a Knight. 3. For the Marriage of his Eldest Daughter. Only he Promis'd that these *Taxes* shou'd be Reasonable

But to shew what was meant by this *Common Council*, he Promises after in the same *Charter*, that for the Raising of *Taxes* (except in the *Three Cases* before mention'd) he wou'd call the *Bishops*, *Abbots*, *Earls*, and Great *Barons* of the *Kingdom*, and those others who held of him in *Capite*. Which is far from the Notion of the *Commons* as Represented in our *Parliaments*.

And Sr. *Henry* observes, That after the *Commons* were let in to *Parliaments*, the Power of the *Barons* or Great Men Decreas'd, who only before were Able to raise *Rebellions* against the
Crown;

Crown; but then, says he, the *Commons* being Loos'd from their Subjection to the *Barons*, *Ecce novus jam Leviathan grassari cœpit*—— A new *Leviathan* of the *Commons* arose, who made Terrible *Rebellions*, which they never had done before. See this more at large in the *Introduction*. p. 235, 236.

But now from the End of the Reign of *Hen. III.* When the *Commons* came first into *Parliament*, according to *Sr. Henry Spelman* and *Dr. Brady*, their *Rights* and *Constitution* was not of a long time so Settled and Ascertain'd as at this Day. For we find after this several *Acts* of *Parliament*, even as to the Raising of *Money*, which were made by the *King* and *Lords* without the Concurrence of the *Commons*, as you will find in *Cotton's Abridgment of the Records*. Printed 1689. There p. 17. n. 6. and 19. n. 8. in the 13 *Edw. III.* The *Lords* grant *Aid* to the *King* for themselves, without the *Commons*. And the like 12 *Edw. IV.* p. 688. n. 9. And 13 *Edw. IV.* p. 691. n. 43.

An Imposition upon *Merchandize*, 21 *Edw. III.* by the *King* and *Lords* without the *Commons*. P. 53, 54. n. 16.

The 4. of *Hen. VI.* It is Decreed by the Assent of the *Lords*, that the Subsidy of *Tonnage* and *Poundage* granted Conditionally, shou'd be Simply Paid, notwithstanding any Condition, p. 584. n. 22.

21 *Edw. III.* An Imposition upon *Cloth* by *King* and *Lords* without the *Commons*, and against their *Petition*. p. 57. n. 31.

The *Bills* of the *Commons* were then by way of *Petition*. For the *King* and the *Lords* were the

Sole Judges in Parliament, the Commons only Petitioners. p. 392. n. 80.

And of these *Petitions* or *Bills* in Parliament, the King sometimes Granted Part, and Deny'd Part. p. 48. 57. 74. 138.

Again Granted with *Exceptions*, *Additions*, *Explanations*, or upon Condition, p. 39, 46, 48, 60, 62, 166.

And 17 Rich. II. ther are several *Acts* which were Enacted by the King with the Assent of the *Lords* only, p. 354.

Again the *Receivers* and *Tryers* of *Petitions* were in those Days a Part of the Constitution of Parliament, who might Receive or Reject any *Petition* to the Parliament. But this Authority was afterwards thought too Great, and a Bridle upon the Parliament, and is now wholly laid aside. As that Committee call'd the *Lords of the Articles* in Scotland, to the same Purpose, for Trying all *Petitions* to the Parliament, and was in being and Part of the Constitution there till the first Year of the Revolution, and were laid aside without any *Act* of Parliament for it.

In those Old times it was likewise the Custom for every Order to Tax themselves. The *Lords* by themselves, as above in the 13 Edw. III. &c.

The *Knights*, *Freemen*, and *Communities* of *Counties* for themselves; and the *Burgesses*, and *Communities* of *Cities* and *Burghs* for themselves. As you may see in the *Rolls* of Parliament punctually Quoted by Doctor Brady in his Continuation, at the End of the Reign of Edw. II. p. 180.

And

And in the 15 *Edw. II.* After the End of the *Parliament*, the *King* Issu'd his *Writs* to the *Prelates* and *Clergy* to meet in a *Provincial Council* at *Lincoln*, to Treat of a *Competent Aid* to be Granted by them. In which *Writs*, as it were for a *Direction*, he *Recites* what the *Earls*, *Barons*, *Noblemen*, and the *Communities* of the *Kingdom* had Granted him in the *Parliament* at *York*. *Ibid.* p. 180, 181.

It was not then Objected, That the *Convocation* could not sit after the *Parliament*, or without the *Parliament*, which was made the great Clamour against the *Canons*, 1640.

The *Bishops* and *Clergy* Enjoy'd this *Privilege* of *Taxing* themselves, till Interrupted by the *Rebellion* of *Forty one*, and the *Usurpations* that follow'd, till the *Restoration*. 1660. But this *Privilege* was not Restor'd to the *Church*, and the *Clergy* have been ever since *Taxed* in *Common* with the *Laity*. Tho' ther is a *Salvo* for their *Right* of *Taxing* themselves, only for the present *Necessity* and till things cou'd be *Settled*—— But it has far'd like other *Salvoes* for *Right* against *Fact*, the *Facts* grow into *Precedents* against the *Right*.

But notwithstanding all these *Ancient Customs*, it has now obtain'd, that as the *King* lays on no *Tax* but by *Common Consent* of all the three *Estates* in *Parliament*; so none of the *Estates* can *Tax* themselves, but it must be by the *Joint Consent* of the *Whole*. And so stands our *Constitution* at this *Day*.

Again *Appeals* lay *Anciently* from all *Courts* to the *King* in *Person*, some he heard himself, in others he *Delegated* whom he thought fit, commonly

commonly *Lords*, to Examine and Report to him. And in some Cases he referr'd it to the *House of Lords* to Hear and Determine. Which last obtaining by Custom this *Jurisdiction* came to be Settld on them, and is now Part of our *Constitution*. See Book Case 22 Ed. III. n. 3. and *Parliament Roll* 25 Ed. III. n. 4.

9. If you ask whether these things are not an Altering or Breach of the *Constitution*?

I think not. For while the *Fountain Constitution* stands Secure, any various Runnings of the *Rivulets* are no Breach of the *Constitution*.

Thus while the *Crown* is Declar'd to Hold only of *God*, and to be in no *Earthly Subjection* as by the 16 *Rich. II. c. v.* And to be Absolutely free from all *Coercion*, and ever to have been so by the *Fundamental Law* of this *Realm*, as by 12 *Car. II. c. 30.* the *Fundamental* or *Fountain Constitution* is preserv'd *Inviolable*.

The *King* may Grant *Limitations* of *Concession*, as *God* does with Men when he makes *Covenants* with them. And this takes not away his *Power* or *Authority*. But if the *King* shou'd Grant any *Limitation* of *Coercion* against Himself, the *Grant* must either be *Void*, as *Contradictory* in it self: Or otherwise he *ipso facto* is *Un-king'd*, and the *Constitution* broke to pieces.

But if we suppose him still to be *King*, then the *Grant* is *Void*, even tho' it were Pass'd into an *Act of Parliament*. For it is a *Maxim* in our *Law*, That an *Act of Parliament* *Destructive* of the *Prerogative* is *Void*, as being *Contradictory* to the *AUTHORITY* which made

it

it. For how can any thing Destroy that *Authority* by which it self stands? And this is supported too by *Acts of Parliament*. By the 17 *Edw. III.* the *Statute* made at *Westminster* the 15 *Edw. III.* was *Utterly Repeal'd*, and to lose the Name of a *Statute*, as *Contrary to the Laws and the Kings Prerogative*. *Cotton's Abridg.* p. 38. N. 23.

And the 15 *Rich. II.* it was Enacted that the *King* should enjoy his *Prerogative* as largely as any of his *Progenitors*, *Notwithstanding any Statute*. And the *Statute of Gloucester* particularly, made in the time of *Edw. II.* was *Utterly Repeal'd*, as *Encroaching upon the Prerogative*. *Cott. Abridg.* p. 342. N. 13.

And so it wou'd be at this Day, if an *Act of Parliament* were made any way *Retrenching the Power of Parliaments*, it wou'd be *Void*, as *Contradictory* in it self.

My Lord *Bacon* puts it among the *Maxims* of the *Law*, *Suprema Potestas seipsam Dissolvere potest, Ligare non potest*. That the *Supreme Power* may *Dissolve* it self, but cannot *Limit* it self. For while it is *Supreme* it cannot be *Limited*, else it cou'd not be *Supreme*. And the same *Authority* which *Enacts* can *Annul*. And where *Inferiors* wou'd *Limit* their *Superior*, their *Acts* must be *Void*, because they can have no such *Authority*.

Therefore any *Act* contrary to the *Original* and *Fountain Constitution* is *Void*. The *Constitution* stands, but the *Act* falls. And while the *Constitution* is *Preserv'd* free from *Coercion*, it is *Supreme* and *Intire*. And this *Supremacy*
we

we Swear to be in the King, his Heirs and Lawful Successors.

And because the Power of the Sword is the Supreme Power, therefore it is Recogniz'd, that The Sole Supreme Government, Command and Disposition of the Militia, and of all Forces by Sea and Land, and of all Forts and Places of Strength, is, and by the Laws of England ever was the Undoubted Right of his Majesty, and his Royal Predecessors, Kings and Queens of England; and that Both or Either of the Houses of Parliament cannot, nor ought to Pretend to the same; Nor can, Nor Lawfully may Raise or Levy any War Offensive or Defensive against his Majesty, his Heirs and Lawful Successors. 13 Car. II. c. vi.

I have said thus much of the Constitution, that we be not Deceiv'd with Words, and think every Crack or Flaw in the Administration a Change of the Constitution. A King may be Slack or not know his Authority. He may Yield too much, and Confound his Affairs, as King Car. I. did, and Rebels may grow too Strong for him. But while we have a King secur'd by the Laws from Coercion, and the Hereditary Succession duely Settled, we cannot say the Constitution is Broken, tho' it may be much Shatter'd.

10. Indeed when the Commonwealth was set up in 1649, the Constitution was Intirely Broken, and Rooted up from the very Foundation. Tho' they said it was only a small Alteration in the Form. For none will own they Break the Constitution. But it was a *de facto* Constitu-

tion. And this I began upon, and now Ask from you Mr. *Higden*, Whether a *de Facto Constitution* is not as much to be Submitted to and own'd as a *de Facto King*? They are both equally *Right*, and equally *Wrong*. And the same Arguments for the Good of the *People*, and that ther be an End of Contest, hold in the one Case as well as in the other.

And if *Oliver* their *Protector* had taken the Name of *King*, it wou'd not have Restor'd the *Constitution*, while *King Char. II.* or any of his two *Brothers*, or any nearer to the *Crown* than *Oliver* did Claim. For our *Constitution* is not only *Monarchy* but *Hereditary* too, and we are Sworn to Both.

Oliver was as much a *King* as if he had taken the *Title*, for his *Power* was the same. *Protector* is as good a Word. And I hope we think not there is a *Charm* in the *Syllables*. It is *Children's Play* to Dispute about Words, it is the *Thing* we Contend for. Our *Kings* had once the *Title* of *Grace*, then of *Highness*, and at last of *Majesty*, but did this make any Alteration in their *Power*? And suppose they shou'd take a new *Name*, of *Emperor*, *Cesar*, or *Czar*, of *Ruler*, or *Governor*, or *Leader*, or *Duke* which is the same, wou'd that make their *Authority* either more or less? Our *Kings* were call'd only *Lords* of *Ireland* till 33 *Hen. VIII.* were they not therefore as much *Kings* of it as afterwards? The *Czar* is call'd *Duke* of *Muscovy*, but he is as much *King* there as in *Russia* where he has the Name of *Emperor*. Has the *Duke* of *Brandenburgh* one bit of *Sovereignty* more since he took the *Title* of *King* of *Prussia*? The
Dukes

Dukes of Savoy, Tuscany, &c. are as much *Sovereigns* as if they had the Name of *Kings*. And *Oliver* was as much a *Sovereign* as any of them. We gave *Philip* the Title of *King of Spain* for a good while. But have we not taken it from him again? What signify *Titles*?

But if Old *Oliver* had understood your *New Doctrin*, Mr. *Higden*, it wou'd certainly have Determin'd him to have taken the Name of *King*, when his Ambition prompted him to it. For, according to You, it wou'd have brought him within the Purview of the 11 *Hen. VII.* and made him a *Lawful King*. And then all that Asserted the *Right of K. Char. II.* against him, had been *Rebels* and *Traitors* with Mr. *Higden*. The Descent of the *Crown* had Purged all *Oliver's* Defects, the *Laws* had then been on his Side, and the *Constitution* had *Deserted* to Him!

But he was a *Bashful Sinner*, and for want of going one Step further, and stealing the *Title* as well as *Dominions* of his Prince, he Lost all; the *Hereditary Right* still remain'd, and he and his Accomplices stand Branded to Posterity by the Name of *Wretches*, *Desperately Wicked*, and *Fanatick Miscreants*, in the Statute 12 *Car. II. c. 30.*

Instead of all which, if he had proceeded in his *Injustice*, and added one *Wickedness* to another, by Assuming the *Royal Character*, and Broke the *Laws* throughout, he had then been a *Just* and *Lawful King*, and had stood in our *Annals* by the Name of *Oliver I.* And wou'd have been called a *Glorious Deliverer*! All this had been, according to Mr. *Higden*,

if when he had *Vacated* the *Throne* by the Murder of the *King*, and Banishing his *Heir*, he had Stept into it himself: He had then been *Rightful* and *Lawful*, and in a Condition to Summon *Parliaments*, to Remove the Ancient *Land-Marks*, to *Enact* and *Repeal* at Discretion! Thus *Wrong*, if you go far enough in it, becomes *Right*! As a Man may fail *West*, till he comes to the *East* at last.

If the Woman of *Samaria* had call'd her *Paramour* her *Husband*, she had been Safe, by this *Doctrin*!

Monmouth seeing what *Oliver* had Lost by his *Modesty*, caus'd himself to be Proclaim'd *King*. And if he had *Succeeded*, wou'd have been as Good a *King* for Mr. *Higden*, as any *Hereditary Monarch* in *Europe*!

11. His Reign was too Short to *Coin* Money. But *Oliver* did it and the *Commonwealth* of *England*, with their own *Image* and *Supercription* upon it; which you, Mr. *Higden*, make a Full and Indisputable *Title* to the *Obedience* of the *Subject*, without any further Enquiry, and Quote *Grotius* and *Aristotle* his *Criticisms* of *vovusua* Money coming from *vovos* the *Law*. Whence to Adulterate the *Coin* is reckon'd amongst *Treasons*. And if you had liv'd then, and Adulterated their *Coin*, you might have found it so. For why shou'd they who had *Usurp'd* every Part of the *Sovereignty* Stick at that of *Coining*? They Assum'd the whole *Sovereignty*. And as such, they were Own'd and Treated with *Abroad*, Recogniz'd and Obey'd at *Home*. Only some wou'd Trifle about the Word *King*. You wou'd not have had the *Commonwealth* to have taken that
Name!

Name! And their *Image* and *Superscription* upon their *Coin*, and *Oliver's*, afterwards wou'd have Determin'd your *Allegiance* to them, if you had liv'd then, and been of the same *Principles* you Profess now. You think this so *Material* an *Argument* and *Decisive* in this Point, that you spend from p. 89. to p. 94. upon it, to shew that our *Allegiance* must follow the *Coin*. It generally do's indeed—— But this wou'd have Deceiv'd one, while the late King *James* was in *Ireland*, and his *Coin* current here, to have ask'd, *whose is this Image and Superscription?*

But, Sir, this *Argument* about the *Coinage* was made use of by Dr. *Sherlock*, and is Substantially Answer'd in Dr. *Sherlock's Case of Allegiance Consider'd, with some Remarks upon his Vindication*. Printed 1691. p. 59. to 62. to which you have made no Answer. And it is strange that you have not Consulted what your late Brethren have Wrote upon the same Argument you set up, before you had Determin'd your self to the other side, in so very Important a Cause, and for which you had Suffer'd so long, by losing Time and Expectations.

No more can be Infer'd from *Coinage* but Possession. Which is a full *Right* where ther is no better *Right*, as in the Case of the *Roman Emperors* in our *Saviour's* time. But *Oliver* and the *Regicides* Despised the Title of Possession. They pleaded the *Right* of the *People* to Judge and Condemn their *King*, and Resume that *Authority* which they Pretended he held by their Commission, and had Forfeited to them

by breaking the *Original Contract*. See *King Charles his Case*. Or, an *Appeal to all Rational Men, concerning his Tryal at the High Court of Justice*. Being for the most part that which was intended to have been deliver'd at the Bar, if the King had Pleaded to the Charge, and put himself upon a fair Tryal. By John Cook of Grays-Inn, Barrister. Printed, 1649. This Cook was Solicitor against the King at his Tryal, and Suffer'd with other *Regicides* after the *Restoration*. And in this *Argument* of his, he says, p. 21. *Possession is a vain Plea, when the Matter of Right is in question, for Right can never dye. The Notion of Possession extinguishing Right was Abhorrent even to These! And indeed it has something in the Consequences of it more Fatal to Human Society, and to all good Principles, than even the Pretence of the Power of the People, which Murdered K. Char. I. For that is a Principle, (be it Good or Bad) and there is something to be Pleaded, something to be Prov'd in it, as you see they here brought the King to a Tryal, and had Witnesses ready to be Examin'd against him, and he had Liberty to make his Defence. But the Principle of Possession giving Right being once Admitted, ther Remains no other Principle in the World, no Right or Wrong, no Just or Unjust, no Proof, no Examination, no Tryal! But if you Thrust out a King (no Matter How) and Refuse to Hear any Defence he can make, his Right and of all his Heirs is Immediately and for ever Extinguished, and becomes the Right of those who have Dispossest'd him against all Right! This is Rapite, Capite, Catch who*
Catch

Catch can, Rob, Murder, Steal, all is your own
you can Carry off!

12. And here, Sir, I wou'd Plead for a little of that *Regard* you Contend for so Movingly, p. 6. and 7. to be paid to our *Ancestors* who submitted to *de Facto Kings* in the times of *York* and *Lancaster*, Not to think there should be None who Understood the Constitution and their Duty, or had Virtue enough to Suffer for it. For this wou'd be, as you say, to entertain a very mean, or a very Hard Opinion of our *Ancestors*. In Modesty, we cannot but allow them to Understand what the Constitution was in their own times. And shall not we, Sir, have as much Deference for our more Immediate *Ancestors*, your Father and Mine, Sir, who did not Understand *de Facto Constitutions* in their time, and had the Virtue (as we Us'd to call it) to Suffer for it? But now we must make them all *Fools*, or *Worse*!

Besides, those long ago were our *Popish Ancestors*, who had the *Pope* to Solve their Consciences, and he was Generally on the *de Facto* Side. If we Blame them for being thus Blindly led by him, then do we not Accuse our *Ancestors* of Ignorance? Nay, we have had *Heathen Ancestors* too, But Truth and Religion must not be Measur'd by our *Ancestors*. This is an Argument for *Women* and *Children*. To move *Passions*, rather than Convince Reason.

(II.) I come now to *de Facto* and *de Jure*. You say it was Common Usage, that is, Common Law, to Submit to *de Facto Kings*. You
are

are Certainly, Sir, in the Right of it. Nay, I will tell you more, it was Impossible to be otherwise. For none cou'd be *de Facto*, unless the *People*, and the *Major Part* too, at least the *Strongest* were of his Side.

1. But then you must Allow me, That it was *Common Law* or *Usage* likewise for *de Jure* to pull down *de Facto*, and the *People* must Join in this too. And you give many Instances of it your self. So that the *Common Usage* runs not all on your Side, as you think; and you are so sure of it, as to Ask, p. 49. but *one Instance* against it in all our *Laws* or *History*.

2. If the Notion of *de Facto* being likewise *de Jure* had been so the Common and Receiv'd Notion as you say, what an Easy Answer had the *Parliament* to give to *Richard Duke of York*, when he put in his Claim for the *Crown*, before the *Parliament* of *Hen. VI.* he being then present and Actually upon the *Throne*? Might they not have said to *Richard*, do you not see *Henry* upon the *Throne*? And *de Facto* is *de Jure*. Then what have you more to say? But instead of that they *Declar'd*, upon *Richard's* setting forth his Proximity of Blood, That his Title cou'd not be Defeated.

3. I know, Sir, you call this a *Partial Declaration*, and Labour to Prove it from p. 53. to 58. But, Sir, all the Use I have to make of it is to shew, That *de Facto* being always
de Jure

de Jure was not the Receiv'd Notion of those Times. And against this you have said nothing.

Nay, you own the Cause goes against you, upon this Point, while you find fault even with *Acts of Parliament* for *Attainting* of *Usurpers* and those who Adher'd to them. You call these *Attainders*, p. 36. *Stretches beyond Law, in the Heat of the Victor's Rage against his Rival.* And you say plainly, p. 53. That the Distinction of *de Jure* and *de Facto* was *Misapply'd* in the Statute 1 *Edw. IV.* But you are very Free and say, p. 57. *This Declaration of Parliament proves too much, and therefore proves nothing at all.* And speaking of *Acts of Recognition* you, say, p. 76. *In which Parliaments have ever been Liberal of their Expressions.*

4. This is an Easy way, Sir, to put off *Acts of Parliament* ! Will you Allow the same Liberty as to those Quoted on your side ? But let the *Parliament* be Faulty which way it will, Yet this is Clear on Both sides, That *de Facto* and *de Jure* being the same thing, was so far from being the *Comon Notion* of those Times, that it was as *Singular* then as it is Now. I do not think ther was one Man in all *England* of your Opinion, Mr. *Higden*, during the Dispute of *York* and *Lancaster*, which is the Time whence you bring your *Precedents*, and whereon you Build your *Hypothesis*, and wou'd persuade Us that it was the Opinion of every Man at that Time. For how cou'd it be their Opinion, or of any one of them, when every *Battle* that was fought

fought was against the King in *Possession*, on behalf of him who Pretended to have the *Right*? You know that both *York* and *Lancaster* did Pretend to be next in *Blood* to the *Crown*, and so to have the *Right*. But neither of them thought this *Right* cou'd be Extinguish'd by *Possession*, for Each of them fought against the Other who had got into *Possession*, and set up his *de Jure* against the Other's *de Facto*. Cou'd any of them then think that *de Facto* and *de Jure* were the same, or that the *Right* was Extinguish'd by *Possession*?

If this had been the Current Notion, why wou'd the *Usurpers* after they had got into *Possession* be so Sollicitous for *Resignations* from the Deposed *Princes*? As in the Case of *Edw. II.* and *Rich. II.* And even not to think themselves secure in these forced *Resignations* (tho' they made them say they did it *Willingly* and *Freely*) till they had taken the *Lives* too of these *Kings* who once had *Right*. They wou'd not trust to the *Extinguishing* by *Possession*. Which they might safely have done, if the Notion had been so *Universal* and even to be the *Common Law*, as you say, Mr. *Higden*.

Can you Name any *King* since the *Conquest* who did not Pretend some *Right* besides *Possession*? Even *Rich. III.* did pretend that the Children of *Edw. IV.* were *Illegitimate*. And as Great a Monster as he was, he wou'd not have *Murdered* the poor Young *Princes* his Nephews, if he had thought *Possession* alone a good *Title*.

5. Pray, Mr. Higden, what do you think of our *Kings* and *Queens* taking the *Arms* of *France*, and the *Style* of *Kings* and *Queens* of *France*, calling *Lewis* only the *French King*, or the *Most Christian King*, to Avoid calling him *King of France*? Is it not to Preserve what we think our *Right* against a very long *Possession*?

Suppose this *French King*, or any other *King*, shou'd take any of our *Countries* from *Us*, wou'd not we think our *Right* a just Cause of War against his *Possession*?

Do we not think so in our War against *Philip* of *Spain*? For he was in *Quiet Possession* of all *Spain* when We set up the *Right* of *Charles* against him. Do we think then that *Possession* does Extinguish *Right*?

If it does, then the *French King* has a Just *Right* to all his *Conquests*. And it is against *Right* to seek to Recover them.

Unless you Mean, That *Possession* giving *Right* is a *Privilege* only to the *Usurpation* of *Rebels* against their *Natural Sovereign*, as being the Most Just and Conscientious *Conquest* that is Possible to be Made! And that none can keep a *King's* Country from him but his *Subjects*, which is some Favour!

6. But, Sir, I know you Condemn all *Usurpation* and *Rebellion*. Your Book says so plain enough, and that you think these *Heinous Sins* and of the first Magnitude.

That which I wou'd know then is, Whether this Great *Sin* ought not to be Repented of? And if you were *Confessor* to such an *Usurper* (suppose *Oliver* or any other) wou'd you not

not Exhort him to *Repentance*? And what *Repentance* without *Restitution*? For *Non dimittitur Peccatum nisi restituatur Ablatum*. Wou'd you give him *Absolution* if he wou'd not *Repent* and *Restore*? And is it Possible that he shou'd be Oblig'd to *Restore*, and yet the *Conscience* of all the *Subjects* be Oblig'd to Support him in his *Usurpation*? Will he be *Damn'd* for not *Restoring*, and will they go to Heaven for Maintaining him in his *Unjust Acquisitions*?

But he cannot *Restore*. For none can *Restore* but to the *Injur'd* who have the *Right*. And Mr. *Higden* has *Extinguished* the *Right* of the *Dispossessed*.

And I think taken away the *Injury* done him too. For ther is no *Injury* where ther is no *Reparation* due, when it may be made. And *Reparation* is due only where ther is an *Injury*.

So that by this it is no *Injury* to *Kill* the *King* and *Seize* his *Dominions*!

To kill any other Man is *Murder*, but the Descent of the *Crown* purges this in an *Usurper*!

And *Rebellion* is an *Injury* only where it is *Little*, and *Robs* the *King* of a *Share*. But if it takes *All*, it is no *Injury* at all!

But if to Avoid this you say, That the *Usurper* is Bound in *Conscience* (tho' not by *Law*) to make *Restitution*, then you own a *Right* in the *Dispossessed Prince* or his *Heirs*, which overthrows your whole *Hypothesis*. And that *Right* can be no other than a *Right* to the *Sovereignty*, and consequently to the *Allegiance* of

of all the *Subjects*, which Necessarily follows the *Right* of the *Sovereignty*.

7. And if you will take the Judgment or Authority of the *Parliament* 1660, King *Char. II.* was True and Lawful *King* from the Day of his *Father's* Death, tho' others were in *Possession* all that While. And he gave *Commissions*, *Pardons*, and *Grants* when he was in *Exile*, and all other *Regal* Acts that he had opportunity to do. And these were never *Question'd* for his being then out of *Possession*. But on the other hand the *Acts* of the *Usurping Possessors* and their *Parliaments* were Declar'd Null and Void, for want of Sufficient *Authority* in the *Enactors*, and because their *Possession* was Contrary to *Right*. They cou'd not think then that every *Possession* gave *Right*, or that *Right* was Extinguished by an *Usurped Possession*.

Prince *Oliver* was *Hanged* and his *Head* set up for his *Usurped Possession*.

Queen *Jane* was *Beheaded* for the same.

8. And ther was not one *King* of the House of *York* or *Lancaster*, during their Dispute, but who was *Attainted* for being only *de Facto*, by the other side who said they were *de Jure*. Thus *Hen. IV. V. and VI.* were *Attainted* by *Edw. IV.* Who was likewise *Attainted* by *Hen. VI.* And *Rich. III.* was *Attainted* by *Hen. VII.* And all this was done by *Parliament*. Which if it be the *Constitution*, then how can a *King de Facto* be a *King* by the *Constitution*, when the

the *Constitution* Attaints him for being a King *de Facto*?

Hen. IV. was Attainted by the Name of *Henry of Darby*, and *Rich. III.* by the Name of *Richard Duke of Gloucester*. Which shews that tho' they did Assume the *Royal Style, de Facto*, yet that it did not *de Jure* belong to them.

9. You except against the Instance of *Queen Jane*, and say, p. 68. That She was not *Queen de Facto*, but *in Fieri*. Why? What did she Want? You say, *She had no Recognition by Act of Parliament*.

Then it seems ther is something else needful besides *Possession* to give a *Right*. Nay, to make a *de Facto*. For *Q. Jane* had *Possession*, and yet you say she was but *in Fieri*. The Duke of *Northumberland* Pleaded the *Great Seal* of the *Queen de Facto*, and Order of her *Privy Council*. The Judges did not say she was only *in Fieri*, they Allow'd her to be *de Facto*, but their Answer was, *That the Great Seal of one that was not Lawful Queen, could give no Authority, nor Indemnity, to those that Acted on such a Warrant*. *Dr. Burnet's Reform Part II.* p. 243. who tells Us *ibid.* p. 257. That *Cranmer* Arch-Bishop of *Canterbury* (and others) were Attainted by *Parliament* for Adhering to *Q. Jane*. Yet his *Bishoprick* was not Declar'd *Void*, nor he Depriv'd till it might be done *Canonically*.

And ther wanted not Pretence for *Q. Jane*, because *Q. Mary* was Declar'd *Illegitimate* by *Act of Parliament*. But that Signify'd Nothing,

thing, nor did Excuse any who Acted against Her.

And as to *Q. Jane* not being Recognized by *Parliament*, it was only because ther was not time for it.

Neither had *Queen Mary* at that time any Recognition by *Parliament*. And if this be Necessary to make a *King* or a *Queen*, then neither *Mary* nor *Jane* were *Queen's* at that time. And then it was very hard upon the Duke of *Northumberland* and others who were Arraign'd and Executed as Traytors to *Mary* before she was a *Queen*.

As *Watson, Clerk, &c.* were for a Conspiracy against *King Jam. I.* before his first *Parliament* in *England*. *Watson* pleaded it cou'd not be *Treason*, because the *King* was not then Crown'd. He was Crowned on *St. James Day, July 25. 1603.* And his first *Parliament* did not Meet till the *March* following. So that Recognitions of *Parliaments* are not necessary to make *Kings*. Our *Law* says, the *King* never Dies. And Recognition is Acknowledging a Right that was before.

However the *Lady Jane* was Equal to the *Lady Mary* in this Point. But in all others she far Exceeded her, except only that of Right. For the *Lady Jane* was Proclam'd *Queen* at *London*, and Own'd by all the Face of Authority then in the *Kingdom*, the *Privy Council* and *Great Lords*, with the *City of London*. All the *Judges* but one Subcrib'd to her Title, with the *Lord Archbishop (Cranmer)* the *Lord Chancellor*, and 33 of the *Privy Council*. And *Ridley Bishop of London* Preached it up at *St. Paul's*

Cross. See Dr. Burnet's *Reformation*. Part. 2. p. 223. and p. 238.

On the other hand, the Lady *Mary* made then but a very Slender Figure, Skulking as it were from Place to Place, even to the Sea shore, not knowing where she was Safe. She was within half a Days Journey of *London* when her Brother *Edward VI.* Died but was Advis'd by her Friends to Retire, as she did, and left the *Possession* to *Jane* her Rival.

To say she did not keep *Possession* long, is nothing to the Purpose, for one Day is as good as seven years to Determine *Right*. Or else, Mr. *Higden*, you must tell us, how long *Possession* must continue to make it *Possession*.

Blood's *Possession* was a little with the shortest, for he cou'd not Carry off his Prey. But if he cou'd have kept it, he wou'd have had a *Right* to the *Crown* he *Stole*, by your Doctrin, as Good and Lawful as any Hereditary King ever was in *England* !

10. But, Sir, by *Possession* the *Law* means only a *Just* and *Lawful Possession*. And supposes a *de Jure Possession*, even where an *Usurper* has the *Possession de Facto*. As you may see in the *Statute 1 Mar. Sess. 2. c. iv.* where Queen *Mary* her *Most Lawful Possession* is said to have been for a time *Disturbed and Disquieted*, by the *Trayterous Rebellion and Usurpation of the Lady Jane*, &c. Now this was before Queen *Mary* had any *Possession de Facto*, for the Lady *Jane* never *Disturb'd* her afterwards. But this is Explain'd in the said *Statute*, where it is said, *That Immediately after the Decease of Edward VI. the Imperial Crown of this Realm, with all the Dignities &c. there-*

unto

unto belonging; did not only Descend, Remain, and Come unto our most dread Sovereign Lady the Queens Majesty, but also the same was then Immediately and Lawfully Invested, Deem'd and Adjudged in her Highness most Royal Person, by the due Course of Inheritance, and by the Laws and Statutes of this Realm.

And that Statute was made to Confirm such Proceedings during the Short Reign or Usurpation of the Lady Jane as Concern'd the Benefit of the Subject, and that they shou'd be as Valid, as if done by Queen Mary her self, and in her Name. This I think sufficiently Evinces that Lady Jane was in Possession, and a Queen de Facto. Else why shou'd any of her Acts as Queen be Annulled (as several were, all particularly after such a Day, the vi of July last past) and others Confirmed?

And such a de Jure Possession in the Deeming of the Law, the Parliament did own to have been in King Char. II. during the 12 Years of his Banishment, while the de Facto Possession was in the Usurpers. But all the Right was still in the King, tho' he had never been de Facto in Possession.

11. You begin your Book with Casting a Stumbling-Block in the way, and say, p. 1. That ther were Thirteen Kings from the Conquest to Henry the VII. who came to the Crown without Hereditary Titles.

This is to give Countenance to Usurpation, and make it Popular. But the Repeating of Wickedness makes it not less but much the more Wicked. And your Principles Condemn Usur-

panion. Therefore this makes nothing for you: It was only to Cast a *Mist* before the Eyes of the Readers.

But then you shou'd have told them, That tho' several did *Usurp* the *Crown*, yet that they cou'd not be *Settl'd* nor Enjoy it *Peaceably*, till the *Death*, *Resignation*, or *Compromise* of those who had the *Hereditary Right*.

William the *Conqueror* left *England* by his *Will* to *William II.* his Second Son, but left his Eldest Son *Robert* to Inherit *Normandy*, which he had by *Hereditary Right*. I suppose he thought that he might Dispose of *England* as he pleas'd, being his own Acquisition by *Conquest*. Sir *John Davis* says he was more a *Conqueror* of *England* than *Hen. II.* was of *Ireland*, which as a *Conquest* he gave to *John* his Youngest Son. Who if he had not come to the Crown of *England*, he and his Posterity had Enjoy'd *Ireland*, Independent of *England*, which Devolv'd to his Elder Brother by *Hereditary Right*.

But *Robert* the Eldest Son of the *Conqueror* Contended with his Brother *William II.* for *England*, and at last came to a *Compromise* with him, to have it after his *Death*, and a Certain *Sum* to be yearly pay'd him in the mean time.

He made the like *Compromise* with his other Brother *Hen. I.* who Marry'd the *Heirefs* of the *Saxon Line*, *Edgar Atheling* having before Submitted.

And *Stephen* the *Usurper* made the like *Compromise* with *Maud* the *Empress Heirefs* of *Hen. I.* and with her Son *Hen. II.* who accordingly did

did Succeed him. And received an Hereditary Kingdom without Diminution. And therefore Recalled the Crown Lands which were Granted away by K. Stephen, for that the Charters of an Invader ought not to Prejudice a Lawful Prince. Brady's Hist. England. p. 298.

Arthur Duke of Britany did Homage to his Uncle King John. *ibid.* p. 465, And soon after Died, some say was Murder'd by K. John.

Edw. III. when Young was Carry'd about by the Queen his Mother and other Rebels, to give Countenance to their Conspiracy against his Father K. Edw. II. And when they would have made him King, *Juravit quod invito Patre Nunquam Susciperet Coronam Regni.* He Swore he would never take the Crown against his Father's Will. whereupon they brought him a Resignation (they forced his Father to give) wherein he Declar'd that he Willingly and Freely did Resign to his Son. Whereupon, and his Mother's persuasions, he was set upon the Throne, being then but Fourteen Years of Age. About half a Year after his Father was Murdered by the Rebels, and he Reign'd afterwards by Hereditary Right. And did Justice on the Murderers, Confin'd the Queen his Mother during her Life, and Hang'd the Great Mortimor her Accomplise, at Tyburn.

Hen. IV. Claimed the Crown by Proximity of Blood, as next Heir. And the Heirs of York Submitted to him.

Hen. V. and VI. the same.

And Rich. III. Pleaded the Illegitimacy of the Children of his Brother Edw. IV. And so to be Next Heir.

These are all upon whom any *Usurpation* can be Charged from *Will.* the *Conqueror* to *Hen.* VII. For *Hen.* II. *Rich.* I. *Hen.* III. *Edw.* I. II. and III. and *Rich.* II. all Reign'd by *Hereditary* Right. And all the others make but *Eight*. Out of which if we Except *Will.* II. to whom the *Conqueror* left the *Crown.* *Edw.* III. for the Reasons above. And the three *Henrys* who Claim'd as Next *Heirs*, and were Submitted to by the other *Heirs*, this will leave but *Four* of the *Thirteen* Mr. *Higden* Reckons. And *Rich.* III. Claiming as next *Heir*, own'd the *Right* to be in the Next *Heir*. So that this will leave but *Three*, that is, *Hen.* I. *K. Stephen* and *K. John*, upon whom it can be Alledg'd that they came to the *Crown*, without Pretence of *Hereditary* Right. And none of these *Three* cou'd be Establish'd but by *Compromise* with those who had the *Hereditary* Right. Was the *Thirteen* then that Mr. *Higden* speaks of a Mistake of the *Printer* for *Three* that it shou'd have been? And I will take even these *Three* from him in the next *Page*, and leave his *Sum Total* a *Naught*.

But, Mr. *Higden*, you are so Fond of Multiplying *Usurpers* upon Us, that you Repeat this again in another Form, p. 62. and of *Eleven Kings* from the *Conquest* to *Edw.* III. you make no less than *Eight* to have been *de Facto* or *Usurpers*. And some of them (you say) through their whole *Reigns*, by which you must mean those who never Obtain'd any *Right* by the *Death* or *Cession* of those who had the *Right*. And of this Sort you cannot Name One. *William* I. Conquer'd *Harold* an *Usurper*. And *Edgar Atheling* the true *Heir* Submitted and

and Swore Fidelity to him. And the other *Usurpers* made *Compromises* with the Right *Heirs*, or *Survived* them, as I have shewed. And these were but *Four* at most. But you make *Edw. III.* an *Usurper*, when he was a *Child*, and Impos'd upon by his *Mother*. What shall I call this *Straining* in favour of *Usurpation*!

But, Mr. *Higden*, this whole matter is Foreign to your Purpose. For it signifies nothing what *Encroachments* were made upon the *Hereditary Right*, or what *False Titles* were set up, I say this is nothing to your Point, if *None* set up the *Title* of bare *Possession*; Which was only Impossible, because none could make that a *Plea* till he was in *Possession*. And therefore they must make use of other *Pretences* to Gain the *Possession*. And they wou'd not Renounce these afterwards, for *Popularity*, and because none will call Himself a *Knave*, and say he set up *Sham Pretences*. So that you cannot give one *Instance* of any who Claimed by mere *Possession*. That never was set up, and ever was Exploded by all Sorts. Even *William the Conqueror* Claimed by the Will of *Edw. the Confessor*. *William II.* by his Will. *Hen. I.* by Proximity of *Blood* (as he pretended) besides the Election of the *Barons*, who Voted his Brother *Robert* to be *Illegitimate*. *Brady's Introduction*. p. 370. *K. Stephen* pretended that *Hen. I.* upon his Death-Bed had Disinherited his Daughter *Maud* the Empress, and left the Crown to him. Which was Sworn by the Steward of *Hen. I.* his Household before the Arch-Bishop wou'd Crown *Stephen*. *ibid.* p. 371. And *K. John* in his *Charter* says he

D 4

came

came to the Crown *Jure Hæreditario*, *ibid.* p. 377. He was then in *Possession*, it was in the first Year of his Reign, yet he wou'd not Plead that *Possession* as a *Title*. He had also the Donation of his Brother *Rich. I.* who upon his Death-Bed left the Crown to him, and made all present Swear Fealty to him. *ibid.* p. 374. And when all other Pretences fail'd they Plead'd the Choice of the *People*, that is, of their own *Party*, for none of them ever yet meant any thing else by the *People*. But none were so wanting to Themselves as to think *Possession* alone a Sufficient *Title*.

12. And you further say, p. 2. *I don't know there were any NON-FIDELITYS to be found in all those Reigns.*

This was a kind *Memorandum* for your *Quondam* Friends!

But you let all those Escape here who stand out upon the *Abjuration*. Unless you can shew that such *Oaths* were in fashion in those Days. I fancy you will hardly find any before the Year 1659. when *Monk* said it was Swearing against *Providence*. But he started at a New thing, before it was Rightly Explain'd. The Kings then Contented themselves with Swearing Men to be Faithful to them, without *Abjuring* after Turns, which it was in no *Human* Power to Prevent.

But, Mr. *Higden*, in all these Turns there were many *Opposers*, who lost their *Lives* and *Estates* for it. And if you will Suppose that all these Swore contrary to what they Acted, you will pass a very hard Censure upon our
Ancestors,

Ancestors, for whose Reputation you seem so Tender. Otherwise you must suppose that these *Non-Compliers* were likewise *Non-Furors*, at least some of them.

And all the Advantage you can make of it, is, to shew Us, That ther have been those in Other Ages as well as This, who cou'd Dispense with their *Oaths* to serve their Interest,

You say p. 5. " When we hear of a
 " Numerous Party that Espoused the Cause
 " of the House of York, we are apt to look
 " upon them to have been so many *Non-Furors*
 " to the Kings of the House of Lancaster.
 " But this is a great Mistake, for all the Partizans
 " of that House lived in Submission,
 " and took *Oaths* of Allegiance to the Three
 " *Henries*.

Are you sure they All did it? We know Some did. But how Truly did they do it? To take *Oaths* to the House of Lancaster, and at the same time to *Esponse* the Cause of the House of York! Do you Justify this Practice? Else to what Purpose do you bring this Precedent? You had as good have let them been Simple *Non-Furors*, as such sort of *Furors* as these, who Swore to Lancaster, but Wrought for York, and Fought for it too when ther was Occasion.

You tell us in the same Page, " That the
 " Conditions upon which Robert Earl of Gloucester Swore to K. Stephen, had no Manner
 " of regard to the Titles, either of Maud or
 " Stephen, as may be seen in William of
 " Malmsbury

“ *Malmsbury* who liv’d at that time, and De-
 “ dicated his History to that Great Earl.

It is not likely he wou’d be very Severe to the *Earl* in a History he Dedicated to him, and of Transactions wherein the *Earl* had so Great a Share.

I have not that *History*, nor can come at it where I am. But Dr. *Brady* in the Reign of K. *Stephen* Quotes *Malmsbury*, and the same Page you Quote, p. 101. (among others) to shew that the *Earl* did this to *Dissemble* his Design, which was to Promote the Interest of his Sister *Maud* and her Children. It was like the Part which *Hushai* the Friend of *David* Acted with *Absalom*. And the Condition he put to his Oath was, That so long as he (*Stephen*) freely permitted him to enjoy his Dignity and Estate, he should be true to him. *Brady*, p. 273. Which had a double Meaning, for he knew that when he Appear’d for the Right of *Maud*, K. *Stephen* wou’d seize his Honours and Estates, as he did. p. 275.

Now, Sir, You shou’d have told this too, and not by saying that the Condition of the Oath the *Earl* took had no Respect to the Titles of *Maud* or *Stephen*, lead your Reader to think that the *Earl* had no Respect to these Titles, but look’d only to the King in Possession; the Contrary of which is most Evident, for he Fought for *Maud*, and took K. *Stephen* Prisoner in the Field, and Adhered to her Cause most Firmly. p. 287.

Sir, Not telling the whole Truth is false Evidence. You should have told likewise, That the Pinch of the Question lay here, the *Earl* (as

(as all the other Great Men) had sworn to *Maud*, in the Presence of her *Father* King *Henry* I. as the true *Inheretrix* of the *Crown*. And after *Swore* to *K. Stephen*, when he had got into *Possession*, and *Maud* had never been in *Possession*, she being then beyond Seas, and the *Question* was, which of these *Oaths* shou'd take Place? And it was Determin'd by the *Pope* and the *Religious* Men of those Days for the first *Oath* made to *Maud*, tho' but then in *Reversion*, against the *Oath* to the *King* in *Possession*. p. 275. But, Sir, this Matter of *Fact* wou'd not have serv'd your *Hypothesis*.

(III.) I come next to your *Precedents*. And the first thing I shall observe is, That they are all brought out of those Times of *Confusion*, in the Dispute betwixt *York* and *Lancaster*, when ther was nothing but *Rebellion* and *Usurpation* making the *Laws* speak what they thought fit. And this was far from being an Age of *Precedents*.

The Reigns of *Hen. IV. V. and VI.* lasted about 60 Years, so that ther was even a Necessity not to Vacate the *Judicial* Proceedings and Suits at *Law* betwixt Party and Party. This Answers the *Quotations* you bring upon that Head.

And this cou'd not be done, without allowing the *Acts of Parliament* in those Times, upon which the *Judicial* Proceedings did Depend.

And those *Acts* being Good in themselves, so far as related to the *Subject*, the *Lawsful Kings* when they came in were willing they shou'd be continu'd.

Yet

Yet so, as that a sufficient *Mark* shou'd be put upon the *Usurped* Authority by which they were *Enacted*. Which I will shew you in the next *Section*.

As a Preparative to which, it may be consider'd, That things may obtain the Force of *Acts of Parliament*, and be reckon'd as such, which were not so in their first *Formation*.

Thus *Magna Charta* is plac'd the first in our *Statute-Book*. And yet it is nothing in it self but a bare *Charter* from the *King*. But after *Acts of Parliament* being built upon it, and confirming it, it now obtains the Force and Name of an *Act of Parliament*. And beyond any others, insomuch that it has been thought *Un-Repealable*, as being the Foundation of all our *Laws*.

Again, I have shewed you several *Acts of Parliament* so made as would not be Allowed now. Yet they pass for good *Acts of Parliament* still, and are so *Pleaded* in our *Courts*.

Nay, *Parliaments* so Call'd and so Constituted as I have shewn, would not be Allowed for *Parliaments* at all now. Yet by Custom this also has Obtained.

You tell p. 9. how before the 1 *Edw. VI.* All *Actions, Suits, &c.* were *Discontinued*, upon the *Demise* of the *King*, in whose *Name* and by whose *Authority* the *Laws* were Administred. Then p. 9. 10, 11, 12. You Quote many Cases out of the *Year Books* where such *Actions* and *Suits* were *Discontinued* upon the *Demise* of an *Usurper* as well as of a *Lawful King*. Thence you Infer that the *Law* takes

Usurpers,

Usurpers, when in *Possession*, to be as Good as *Lawful Kings*.

But, Sir, the *Laws* were Administred in the *Names* of *Usurpers* while they kept in *Possession*. And it was Impossible to be otherwise. And the *Judicial* Proceedings of those Times must have been Allowed by *Rightful Kings* when they came in, without an Utter Ruin to the *Subjects*. Ther was an Act 1 *Mar.* Sess. 2. c. iv. to Confirm what of this sort had pass'd in the Name of Queen *Jane* during her *Ten Days* Reign. How much more during the *Sixty Years* Reigns of the Three *Henries*? So that this is no Proof at all of the *Legality* of these *Kings* or *Queens de Facto*, more than the *Histories* which tell Us ther were Such.

You your self shew this, p. 15. where you give a long Quotation out of the *Year Books* of *Bagot's Case*, who was *Naturaliz'd* by *Hen. VI.* And this was Allowed to be Good in the Reign of *Edw. IV.* by the same *Judges* (likely) who had been under *Hen. VI.* But the Reason given in the *Year Book* is, *Because it was Necessary that the Realm should have a King under whom the Laws should be kept and Maintain'd.* But that this might not be Interpreted to imply the *Legality* of that King *de Facto*, it is Ordered in the same *Case*, as Quoted by you, "That for a *Trespass* committed in "*Hen. VI's* time, the *Writ* shall run *Contra* "*Pacem Henrici VI. Nuper de Facto et non de* "*Jure.*

Then the *Case* is put of Compassing the *Death* of *Hen. VI.* And it is called *Treason*,
because

because the said King was not Meerly a Usurper, for the Crown was Entailed upon him by Parliament. Otherwise it seems by this Resolution of the Judges (wherein their own Case might be concerned) it had been no Treason to have Compass'd his Death, if he had been Meerly an Usurper.

But is not *Shooting at the King a Compassing his Death?* And was any thought Guilty of *Treason or Murder for Killing King Rich. III. in Bosworth-field?* And he had a *Parliament to Entail the Crown upon him too.* Which his *Judges* might likewise have Pleaded in the Reign of *Hen. VII.* But this was no Part of their Plea, they only Insisted upon his being King *de Facto*, as we shall see presently.

But, Mr. *Higden*, how could these *Kings* be Called *Usurpers*, and *de Facto* and not *de Jure*, if *de Facto* is always *de Jure*? And how can he be an *Usurper* who has the Full and the Legal Right?

You brought these *Cases* to shew, That by the *Judicial Proceedings* in the Time of *Usurpers* being Allow'd, it would follow that they were *Lawful Kings*. But as the *Consequence* will not follow, so these *Cases* you bring have Turn'd upon you, and have expressly Guarded that *Point* against you, and left you to Answer these same *Authorities* you have Produc'd to Maintain your Cause.

I know nothing you can Alledge against this, but to Blame the Conduct of our later *Kings* and *Parliaments*, to Suffer such *Parliaments* as I have Named to pass as such, and
their

their *Acts* to be Allow'd as *Acts of Parliament*. And likewise that the *Judicial* proceedings in such Times, and all Times of *Usurpation*, and in the *Name* of the *Usurpers*, should still be *Pleaded* in our *Courts*. If you think this *Impolitick*, for that it may give Occasion to Others, as it has to you, to Mistake *Usurpers* for *Lawful Kings*, it may be Answer'd in their Defence, That this happens so seldom, and when it do's, is so Easily set Right, that the Danger is not Great, nor would Countervail the Inconveniencies on the other Side. For how can we mistake those for *Lawful Kings* whom our *Laws* Attaint as *Usurpers*, however it Allows the *Laws* made in their times?

But suppose this to be a *Neglect* or *Oversight*, it can Amount to no more than a *Negative* or *Presumptive* Argument. And that is too Weak a *Foundation* to Build any *Principle* upon, especially such as overturns the *Right* of *Crowns*, and the *Peace* of *Kingdoms*.

(2.) But that which wou'd be *Decisive* in this Case is, if we cou'd find any *One* Instance of any *Law* made by an *Usurper* which was *Confirm'd* by the *King de Jure*, or Declar'd *Null* from the Beginning for want of *Sufficient Authority*. This wou'd be an *Affirmative*, and worth a hundred *Negatives* or *Neglects*.

And of this we have a very flagrant Instance in the first *Statute* of *Edw. IV.* who was the first of the House of *York* recover'd the *Crown* after the Three *Henries*. And now being about to settle the *Government* in the
Right

Right Line, the first thing done was, for the Quiet and Ease of the *Subject*, to Declare, Which *Acts* done by the Three *Henries* shou'd Continue good, and which not. And accordingly Confirms the Judicial Proceedings, the Creation of *Noblemen*, and several other things, Excepting such as the *King* thought fit. And the Reason, for such Confirmation is given, because these *Acts* were done by *Usurpers*, who were *Kings de Facto*, but not *de Jure*. And the Manner of Confirming was, That they shou'd be of like force and Effect as if made by any *King Lawfully Reigning*, and obtaining the *Crown* by just Title, as it is worded in the *Statue*. 1 *Edw. IV.*

You come to Answer this *Chap. III. p. 49.* That ther was no Need of any of these Confirmations. This, Sir, is making very Free with that *Parliament*, as if they had been Triffling all this while. But you say that this was done; thro' the Caution probably and at the Desire of those that were Concern'd in them (those *Acts* of *Parliament* then Confirm'd) which did not however stand in Need of that Confirmation. This puts the Fool upon those Concern'd, but takes it not from the *Parliament*, which shou'd Gratify them in what was perfectly Needless. But your Argument is, That other *Acts* which were not Confirm'd stand still Good. That may be, for the Reason aforesaid. But they were still Liable to be Question'd, for want of Sufficient Authority. And therefore those Concern'd in those *Acts* made for the Benefit of the *Town of Shrewsbury*, and of some Religious Houses, were not so Quite out of Purpose as you Imagin, to Desire those *Acts* to be

be *Confirm'd*. If they did Desire it, which Appears not. But that it was an Instance of the *Legislative* Authority being only in *Lawful* Kings.

But why were any of these Acts *Confirm'd*? It shews ther was some Defect in the *Authority* that made them. Can you give one single Instance out of all our *Records* of any *Act* of *Parliament* made by a *Rightful King* that ever was *Confirm'd*, for want of *Sufficient Authority*? This shews you the *Difference*. And the whole Dispute shews ther was a *Difference* made betwixt *de Jure* and *de Facto*.

Were any *Judicial* Proceedings in the Reigns of Kings *de Jure* ever *Confirm'd*, or *Titles* of *Honour* granted by them, or any other *Regal* Act? Here the Cause Pinches. And till you can shew this, you cannot say as you do, p. 8. and p. 23. That Kings *de Jure* own the *Authority* of Kings *de Facto* in as *Ample a Manner* as of Kings *de Jure*, and of *Equal Authority* with *Themselves*, or any of their *Progenitors* of *Undoubted Right*. How can this be said? When we see that Kings *de Jure* have *Annul'd* some, and *Confirm'd* other *Acts* of Kings *de Facto*, but never either of these was done to any *Act* of a King *de Jure*.

To have *Annul'd* all the *Judicial* Proceedings, and all the *Acts* of *Parliament* during the 60 Years of *Usurpation*, wou'd have put the Nation into the *Utmost* Confusion.

And to have *Confirm'd* them all without *Discrimination* might have been too much.

E

Therefore

Therefore the Statute 1 *Edw. IV. Confirm'd* such as was thought fitting. And left the Rest, without being either *Annul'd* or *Confirm'd*, to be Commonly Pleaded. It being still in the Power of the *Government* to Declare them *Null* and *Void*, whenever they saw any Inconvenience by them.

And as no King *de Jure*, so None *de Facto* ever did either *Annul* or *Confirm* any *Act* of a King *de Jure*, as supposing it to Want Sufficient *Authority*. So that the *Difference* appears Plain, even by the Confession of Kings *de Facto*.

(3.) But, Sir, I think you Expect too much, when speaking of the *Laws* made in time of *Usurpers*, you say, p. 19.

“ They who would set aside any of their
 “ Grants, or Oppose some Right that was
 “ claim'd by Vertue of them, as of *Richard*
 “ the Third's for example, did not pretend,
 “ no not in *Henry* the Seventh's Courts, where
 “ they might safely have done it, if it had
 “ been Law, they did not pretend, I say,
 “ that *Richard* had not the Regal Authority,
 “ and Consequently his Grants were Void.

Sir, wou'd you have had *Hen. VII.* who was an *Usurper* upon the Line of *York*, have Declar'd the Acts of *Richard III.* to have been Void, because he had *Usurp'd* upon those in the Line of *York* who were Nearer than himself? This I call Expecting too much from an *Usurper*, to Declare all Acts made by an *Usurper* to be Void.

And

And for the *Judges*, was it not very Natural for them who had been *Judges* under *Richard III.* to make the Best of what they had done? Nor wou'd it have been over safe for them in the time of *Hen. VII.* to have voided *Laws* on Account of *Usurpation*. They might have Hang'd themselves by the same *Law*. The *Vicar* of *Bray* who Complies with *All*, must find Fault with *None*.

You bring a Case p. 38. where the *Judges*, the first Year of *Hen. VII.* were Commanded by him to Consult about the Reversal of the *Act* made in the Reign of *Rich. III.* which *Basfardized* the *Children* of King *Edw. IV.* and *Elizabeth* his Wife.

This, Sir, I think makes against you. For who ever Disputed the *Validity* of an *Act* of *Parliament* made in the Reign of a *Lawful King*? But then the Difficulty lay upon *Hen. VII.* who was an *Usurper*, to Declare the *Acts* of another *Null* for being an *Usurper*. And such he must call *Rich. III.* Else why did he Fight against him? And such he does call him in this same *Year Book* which you Quote, p. 39: giving him only the Style of *Richard* late Duke of *Gloucester*, and afterwards in *Fact*, and not of *Right*, King of *England*. And it was better for *Hen. VII.* That the *Acts* of *Usurpers* should be taken for Good, and so *Repeal'd*, rather than to be Declar'd *Null* from the Beginning. Here was the Case wherein he Consulted the *Judges*. And these must be suppos'd very Plyable, not only as put in by him, but as having been in Place, most probably *Judges*; the Year before under *Rich. III.* For

we Read not that *Hen. VII.* did Change all the *Judges*. And in most *Revolutions* ther is no *Occasion*.

You put another Case, p. 40. in the same first Year of *Hen. VII.* Concerning those who were *Attainted* in the former Reign of *Rich. III.* and were Return'd *Members* of *Parliament* the first *Parliament* of *Hen. VII.* Whether they should sit in *Parliament* before their *Attainders* were Reversed? And the *Judges* gave their Opinion that the *Attainders* should be first Reversed, and the *Attainted Persons* themselves should not be in *Parliament* at the *Reversal* of the *Act*, for as you translate the *Year Book*, p. 41. *Those that are Attainted, cannot be Legal Judges.* Tho' the Words are only, *il nest Convenient*— It was not *Convenient*, that those who were *Attainted* should be taken for *Legal Judges*.

But tho' it was not *Convenient* then, it might be another Time. I dare say if you wou'd set about it, you cou'd find an *Instance*. And will you stand to it, That Men *Attainted* or *Uncapable* by *Law* to sit in *Parliament*, cannot be *Legal Judges*? And will you make that such an Error in the first *Concoction* as to *Void* all their *Laws*, and all the *Consequences* of them for this? will a *de Facto CONSTITUTION* Solve all this too? If so, why do you perplex Us with *Year Books* and *Cases*? Let Us take whatever is *Uppermost*, be it *Right* or *Wrong*! If this is not your Meaning, I do not Understand your Book. And if those *Attainted Persons*, had sat in the *Parliament* of *Hen. VII.* before their *Attainders* had been Reversed, and that *Parliament* had been never the

the Worse *Parliament* for all that, then to what Purpose was this *Case* brought?

Quod fieri non debet Factum Valet, will not hold in all Cases. But if it does in *This*, it will also in *That* of the *Acts* of *Usurpers* being Suffer'd to be Pleaded in the Reigns of *Lawful Kings*. And will be a short Answer to the *Main* if not the only *Argument* in your Book, which is all taken from such *Precedents* as these. And that of *Oliver* and the *Commonwealth* of *England* as Good as any of them.

But *Rich. III.* is here call'd King in *Fact* and not of *Right* in this Quotation you have brought, in the first Year of the Reign of *Hen. VII.* This is the King from whom you bring your best *Precedents* and from the *Acts* of *Parliament* in his Reign. Now let him be Judge; Did he think that Allowing the *Acts* of *Parliaments* in the Reign of *Rich. III.* made for the Benefit of the *Subject*, did Imply *Richard* to be a King of *Right*, when here he expressly Denies him to be a King of *Right*? Yet he Grants him to have been a King in *Fact*. Then he did not think that a King in *Fact* was alwas a King of *Right*. Nor that the *Statute* made in the *Eleventh* of his Reign, to Indemnify those who had fought for a King in *Fact* (Suppose that to be the Meaning) did Infer that such a King was of *Right*, but rather the Contrary, else ther had been no need of an *Act* to Indemnify them. But if a King in *Fact* be not Always a King of *Right* also, your whole Book falls to the Ground. And this *Hen. VII.* has given against you in

Express words. As also those *Acts of Parliament* which have Attainted *Kings* in *Fact* for not being likewise of *Right*. Is it not Plain then they made a Difference?

(4.) Sir, I think you lay too much Stress upon the Opinions of *Judges*. And but of some of them too, as in most of the *Year Book Cases*, and as at this day, where often some of the *Judges* Differ from the others. And these *Cases* are not Certain *Rules*. We find not their Authority Undisputed in our *Courts*. But I have given you a better *Authority*, that is, the *Records* and *Acts of Parliament*.

You say, p. 20. That the *Unanimous Opinion* of the *Judges* is part of the *Common Law* of the *Realm*. It may be so, in particular *Cases* of *Meum & Tuum* betwixt *Party* and *Party*. And yet not Always so, for we have found their *Judgements* Revers'd. As in the *Case* of *Ship-Money*, which all the *Judges* at first gave Under their Hands was *Legal*. And but *Two* cou'd be brought afterwards to *Re-tract*. Ther is Difference betwixt *Common Law* and *Custom* first *Instit.* Every *Custom* is not *Common Law*.

But will you take the Opinion of all the *Judges*, and in *Parliament* too? Which you Quote, p. 53. When being Consulted about the Right of *Richard Duke of York* to the *Crown*, in Opposition to *Hen. VI.* then King *de Facto*, they Answer'd, That the *Matter* was too High, and touch'd the *King's high Estate* and *Regaly*, which is above the *Law*, and pass'd their *Learning*. Unless you say, they *Complemented* Now.

Now. But when they speak on your Side, they are in *Earnest*! But the Reason they give is strong, That the *King* is Above the *Law*. For what makes the *Law* must needs be Above it. And that the Right of the *Crown* did *Surpass their Learning*. Their *Commission* is only to Dispence the *Law* in private Cases betwixt *Subject* and *Subject*. But as to the Right of the *Crown*, they have no more Power to *Judge* of it than You or I.

(5.) Therefore I can by no Means be of the Opinion you set down, p. 88. That the Interpretation of the Obligation of the Oaths, taken to the Civil Magistrate, is the Province of States-Men and Lawyers, not of Divines. This may be the way to have your Conscience Solv'd more Easily! For these *Casuits* you have Chosen, were never thought to be very *Strait-Lac'd*. A *States-Man's* Conscience is a Proverb. I observe our *Homiles* and Bishop *Overal's* Convocation Rook took another Method, and instead of Quoting *Magna Charta* and the *Year Books*, they endeavour to settle Conscience, as to Government, upon the Foundation of the Holy Scriptures. Whence they shew the Original of Govenment, and how Instituted of God from *Adam*. They begin with *Lucifer* the first Rebel, and thence Deduce Rebellion among Men. They Exemplify the Duty of Subjects in the Behaviour of *David* towards *Saul*, and other Scripture Examples. But *States-Men* will tell you, that all this is Nothing to Us, and bid you look to the Constitution for the Measure of your Obedience; and Deduce that from the

Power of the People, which they tell you is the *Voice of God*; and that every thing is *Right* which the People does! But the *Scripture* bids you not follow a *Multitude* to do *Evil*. And tells you of *Iniquity* Establish'd by *Law*. If it had been said, he who *Resists* shall be *Hang'd*, I wou'd Advise with a *Lawyer*: But when it is said, shall Receive to himself *Damnation*, I think a *Divine* ought to understand it.

It is said 16 *Rich. II. c. v.* That the *Crown of England* is in no *Earthly Subjection*, but *Immediately Subject to God*, and to none Other. Now whether is this *Tenure* from *God* the business of *Lawyers* or *Divines*? It is said likewise, That any *Act of Parliament* against the *Law of God* is *Void*. I hope *Divines* have something to do here. If not to *Alter Laws*, yet to settle *Conscience*. And this *High Prerogative of Kings*, which was once above the *Law*, and *Unalterable* by the *Law*, can be *Learn'd* only from the *Law of God*, from which only they hold the *Crown*. But they who wou'd *Exclude God* out of the *Government*, begin with turning *Divines* out of the Cause. They might be too *Strict* in the Matter of *Oaths*. It is a *Law Oath*, say you, therefore let the *Lawyers* determine it. But, Sir, it is the *Oath of God* too, and He will *Require* it. And where *God* is *Concern'd*, *Divines*, and not *Lawyers*, have usually been taken for *Confessors*. Nor is the *Nature of Government* to be taken from every *de Facto Constitution* that may happen, *Right or Wrong*; but from the *Original Institution* of it by *God*, and how it was *Deliver'd* by

by *Him* to *Men*. For from thence only arises any Obligation of *Conscience* to *Government*. And this is more the Work of *Divines* than of *Lawyers*. And some *States-Men* are not willing to be Confin'd to these *Rules*. They Consider *Fact* more than *Right*, and what is *Convenient* (may be to Themselves) more than what is strictly *Just* and *Conscientious*. They study *Machiavel* more than the *Bible*. And he tells them that a *Politician* must not be over *Religious*. And if we think of *Government* only as a *Politick*, for our own Convenience, *Conscience* will not trouble Us much! This, you know, is the Opinion of our *Commonwealth-Men*, That *Government* was the Invention of *Men*, and therefore Lyable to all the Turns *People* please to Make. And wou'd you seek to Convert these out of the *Year Books*, or tell them of our *Constitution*? Wou'd you not rather Carry them to the *Bible*, and there shew them the true *Original* of *Government*, and the Obligation *God* has laid upon our *Conscience* to submit to it, as to His own *Ordinance*? In short, wou'd you talk to them as a *Divine*, or a *Lawyer*, or a *Politician*? In which of these Capacities, do you think, you cou'd best Inforce the Obligation of their *Oaths* to the *Government*? Whether to keep a *Lawful Oath*, or to Break an *Unlawful* One? And whether this is to be Measur'd by the *Law* of *God*, or by any *Law* the *People* make? And whether a *Lawful Oath* may be Discharg'd, by taking another that is *Contradictory* to it? I shou'd think a *Pious* and *Learned Divine* more Proper to be Advis'd with in such Cases,

Cases, than the Ablest *Lawyer* or *States-Man*. But above all, an *Honest* and *Sincere Heart*, for ther wants not much *Understanding* in these Matters, Unless it be to *Perplex* and *Puzzle* the Cause. And he that *Seeks* will *Find*, in a *Bad Sense*, as well as in a *Good*. *Balaam* had a *Mind* to the *Reward*, but wanted an *Excuse*, and he *Found* it. He was *Importunate* for *Leave* to go, after *God* had *Refus'd* him, and *God* yielded to his *Importunity* and gave him *Leave* at last; but this *Excus'd* him not, and is call'd the *Madness of the Prophet*. The best way in such Cases is this, to Ask ones own *Heart*, Wou'd you take this *Oath*, if you were neither to *Gain* or *Loose* by it? Otherwise you do not take it *Voluntarily* and *Freely*. And all your *Distinctions*, and *High* and *Low Sense*, &c. Where the *Law* allows of no such *Distinction*, shews you take it in a *Sense* contrary to the *Law*, and your own *Conscience* too. For he who *Cannot* take an *Oath* in the *Plain* and *Common Meaning* of the *Words*, and according to the *Sense* of the *Legislators*, *Declar'd* not only in *Words* as *Express* as they can *Devise*, but likewise in all their *Actions* and whole *Government*, I say, he who *Cannot* take the *Oath* thus, without any *Mental Reservation* or *Equivocation* whatsoever, ought to let it alone. And all his *Reasons* and *Distinctions* and *Salvos*, shew only, That he has *Deceiv'd* himself, and wou'd *Deceive* others. Do's he do in this Case as he wou'd be done to? Wou'd he be *Content* that any *Oath* taken to *Himself* shou'd be thus *Distinguish'd* away? Wou'd he *Trust* that Man's

Oath

Oath whom he saw make *Faces* at it, and had stood out many Years against it? But a *Politician* cou'd help with several *Maxims* in this Case, as, *Fallere fallentem*, to do Evil that Good may come, to Look one way and Row another, &c.

These are the Reasons, Sir, why I except against those *Casuists* you Propose. And think the Nature of Government as from God, to be out of the Compass of the Study of the *Common Law*, and more the Province of *Divines*, than of *Lawyers* or *States-Men*, especially where ther are *Oaths* in the Case.

(6.) And now I return to the business of *Precedents*. And Confess my self not able to Understand the last *Paragraph* with which you Conclude your *Second Chapter*, p. 48, 49. I will set it down that I Mistake not. It is the Conclusion you have made from all the *Precedents* you have brought for submitting to a *King de Facto*, and is in these Words,

“ But now on the other side, did the King
“ in Possession, or his Parliaments, or the
“ Parties concern'd, ever think an Act of
“ Parliament was Wanting for those who
“ Fought for Him, against a Person out of
“ Possession, whatsoever Title he had, or Pre-
“ tended to have. Can there be One In-
“ stance given of this, in all our Laws or
“ History?

Sir, I wou'd not put such a Triffling Meaning upon your Words, as to say you Intended this only, While the *King* in *Possession* remain'd in *Possession*. For then, no doubt, he was

was able to *Protect* those who Fought for him. But after he was *Dispossess'd*, and his *Rival* upon the *Throne*, was ther then no Need of an *Act of Parliament* to secure those who had Fought for him? Unless you mean that an *Act of Parliament* made by the *Dispossessed King* wou'd have Signify'd *Nothing*. And then that will Turn upon you another way, and shew the no *Validity* of an *Act of Parliament* made by *de Facto* against *de Jure*. And this Certainly was the Case, for in every Turn betwixt *York* and *Lancaster*, the *Victor* always *Attainted* and put to *Death* whom he thought fit of those who had Fought against him, for the *King in Possession*. And this Occasion'd, as the *History* tells Us, the Utter Extirpation of many *Noble Families* in *England*. And those who Fell on either side make Equally to my Purpose, because both *Rivals* did Pretend to be *de Jure*; and this shews the Notion of those Times to be for *de Jure* against *de Facto*. Whereas if the Notion of *de Facto* being always *de Jure*, and the *Allegiance* of the *Subject* due only to *de Facto*, and to look no further, if this had been so the *Common Usage* as to make it the *Common Law*, as you say it was, and if no *One Instance* can be given against it in *all our Laws and History*, then that long *Civil War* betwixt *York* and *Lancaster*, which lasted above an *Hundred Years*, must all pass for *Romance*! Otherwise to bid me give *One Instance* of *Attainders* for Fighting for a *King in Possession*, is to bid me shew you a *Drop of Water* in the *Sea*!

I have taken Notice, Sir, before, that you like not these *Acts of Attainders*, that you call them *Stretches beyond Law*, in the *Heat of the Victor's Rage*, &c. But they were *Acts of Parliament* still, make them as much *beyond Law* as you please! And then you will tell Us, Which *Acts of Parliament* were made out of *Heat*, and are *Law*, and which are *beyond Law*. And then give others Leave to *Except* too, and it will Reduce our *Statute Book* to a more Reasonable Compass!

(7.) You Urge often, That the *Descent* of the *Crown* purges all *Attainders*. But whether this is Meant of a *de Facto*, or a *de Jure Descent*, is the Question? If you Mean that while *de Facto* is in *Possession* (and it is no longer *de Facto*) it is pretty Safe from *Attainders*, you are Safe. But if it *Purg'd* thoroughly, then cou'd not the *Attainder* be put upon it again, as a *Crime* once Legally *Pardon'd*, is *Purg'd* for Ever. But we find not that the *de Facto Descent* of the *Crown* did thus *Purge* Hen. IV. For he was afterwards *Attainted* as an *Usurper* and a *Traitor*. As likewise Hen. VI. See *Cotton's Record*. p. 670 671.

(8.) And if all *Acts of de Facto* are as *Valid* as of *de Jure*, how came the *Repeal* 1 *Edw. III.* to be Judg'd *Void* in *Parliament*, because made while his Father *Edw. II.* was still *Living*, tho' *Dispossessed*, and then in *Prison*? *Cott. Record*. p. 373.

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The Leared Dr. *Stillingsfleet* Quotes this Case in his *Grand Question, concerning the Bishop's Right to Vote in Parliament in Cases Capital*. Printed, 1680. And gives Us the very words of the *Rolls of Parliament*, p. 81. *Because Edw. II. was Living, and true King, and Imprison'd by his Subjects at the time of that very Parliament of 1 Edw. III. Rot. 64. 21. Rich. II. And speaking of the Repeal of 21 Rich. II. by 1 Hen. IV. he asks this Question p. 83. Whether a Parliament call'd by a Lawful King, and the Acts of it, ought to be deem'd Legally Repeal'd by a Parliament that was call'd by an Usurper, and held whilst the Lawful King was alive, and detain'd in Prison? For he had Quoted the Lawyer's Words before, p. 82. Owning that Rich. II. was their Lawful King. And he says, p. 85. That the Repeal 1 Edw. III. was no Legal Repeal, because Edw. II. was alive and Lawful King, (or else Edw. III. cou'd never have been so) in the time of that first Parliament of Edw. III. and Consequently Edw. III. at that time was an Usurper, and the Proceedings of that Parliament Null and Void.*

I have Quoted this Book of Dr. *Stillingsfleet's*, because I cannot doubt but you have Read it, it so nearly Relating to the Church. And he shews himself Excellently and Critically Skill'd in our *Laws and Constitution*, even beyond most *Lawyers*, and by their own Common Suffrage. And in the Esteem of the House of Lords, while he sat there after he was made a *Bishop*.

In answer to this *Precedent* you say, p. 58. That the Act 1 Edw. III. was not declar'd Void,

21 of RICH. II. but Repeal'd, and therefore valid untill Repeal'd. To which I will give the Answer of Dr. Stillingsfleet, p. 80. That the Act 1 Edw. III. was not barely Repeal'd, but Declar'd in Parliament to be Unlawful, because Edw. II. was Living, and true King, &c, as before Quoted from the Rolls of Parliament, which are more Authentick than our Printed Statutes.

But you say, Secondly, That the Repeal 21 Rich. II. was Repeal'd 1 Hen. IV.

The same was Objected by Dr. Stillingsfleet's Opposer, to which he Answers, p. 83. That the Repeal of Hen. IV. was Void, because it was made while Rich. II. was Living, tho' Deposed, and then in Prison. So that the Case was just the same as that of the Repeal 1 Edw. III. And the Doctor inforces this upon the Lawyer whom he Answers, p. 86. by that Lawyer's owning, That Rich. II. was then Lawful King, tho' Dispossessed, and Hen. IV. an Usurper.

And because you lay your Stress upon the Word Repeal, I will shew you that word may be Us'd without any Intimation of the Legality of the Act Repeal'd. See 12 Car. II. c. 12. §. 6. where the Attainders of the Royalists by the Usurpers are Repealed and Discharged.

And whether the Authority of the Usurpers while in Possession was hereby own'd, you may see, §. 12. of the same Statute, where it is said,

And altho' in this Confirmation of Judicial proceedings, it was Necessary to Mention divers pretended Acts and Ordinances, by the Names and Styles which these Persons then Usurped who made
the

the same—— Yet this present Parliament doth Declare, and it is further Enacted by Authority of the same, That the Names and Styles aforesaid, and Every of them, are most Rebellious, Wicked, Traiterous, and Abominable Usurpations, detested by this present Parliament, as Opposite to his Sacred Majesty's most Just and undoubted Right, &c.

Here this is not only Declared but Enacted. Yet neither this Enacting, nor Repealing did Suppose the *Validity* of these Acts before they were Repealed, and the Contrary Enacted, nor the *Legislative Authority* of those who made them, even while they were in Possession.

But you have a Third Answer, p. 59.
 “ That all the other Acts of Parliament that
 “ were made in the 1 of Edw. III. whilst
 “ his Father was alive, were ever held for Laws
 “ of the Realm, and one of them cited as
 “ such 16 Charles the I. c. 16. about the
 “ Boundaries of Forests. Whereas by Act of
 “ Parliament made in the first Year of the Reign of
 “ King Edward the III. &c.

There are two Sets of Acts in our Statute Book made 1 Edw. III. And this about the *Perambulation* of the Forests is the First of the Second Class. And whether made during the Life of Edw. II. I cannot tell. For he was Murder'd about half a Year after his Son Edw. III. was upon the Throne. But I insist not on this.

Therefore I say, This about the *Perambulation* of Forests being a Common thing, and no ways Concerning the Right of Succession to the Crown, might be Suffer'd to Pass, as I have be-
 fore

fore shew'd other *Acts* have been, which yet were not Right in their Constitution at first.

It wou'd be almost to make a New *Statute Book*, to Ransake all the *Laws* about Common things made in times of *Usurpation* in *England*, and to Determine which shou'd stand, and which not.

It is Sufficient that some of Consequence have been not barely *Repeal'd*, but Declar'd *Unlawful* for want of Lawful Authority in the *Enactors*; and others of singular concern *Confirm'd*, for the same Reason. And one Instance (but you have more) on this side, is Sufficient, where ther is never a one to be produc'd on the Other side; that is, of any *Act* of a *Lawful King* that was either *Repeal'd* or *Confirm'd* for want of Sufficient Authority in the *Enacting*.

(9.) But, Sir, you have help'd me to another Instance, and a Remarkable one, tho' you tell it not out, for it made against you. You say, p. 57. "This Declaration of the 39 of *Henry the VI.* as well as the *Acts* of the *Edward the IV.* were *Repeal'd* and *Annul'd* by the *Act* of Parliament, when *Henry the VI.* Recover'd his Throne.

Now, Sir, where are these *Acts* of *Henry VI.* to be found? Ther are None in our *Statute Book* after his 39th Year. It seems then, That after he had Expell'd *Edw. IV.* from the Throne, he was look'd upon as a *Meer de Facto King*, and Consequently all the *Acts* of Parliament made in that time, were thought Null

and *Void*, and have no Place in our *Statute Book*.

If you say, Was he not an *Usurper* before? I answer, yes, but it was not so Apparent. For *Richard Duke of York*, the Father of *Edw. IV.* had sworn *Allegiance* to *Hen. VI.* and become his *Liege Subject*. And this was Objected to him in *Parliament* when he put in his Claim for the *Crown*. And *Edw. IV.* before he was *King* had Sworn *Allegiance* too. But after that *Hen. VI.* had broken the *Compromise* he made with him, and *Edw. IV.* had gotten the *Crown* which of *Right* belong'd to him, then when *Hen. VI.* put him out again, this was thought meer *Usurpation*, and so none of his *Acts of Parliament* afterwards were put among our *Statutes*.

(10.) Now let me speak a word in *Mitigation* at least of the Behaviour of our *Ancestors*, for whom you shew so great a Concern. For they might think the *Right of York* to be Extinguish'd, because the *Heirs* of that *House* had all along under the *Three Henrys*, carry'd themselves as *Subjects*, taken *Commissions* from them, and *Promis'd*, some Swore *Obedience* to them.

And this may be an Answer to the Observation you make, and Repeat it again, p. 51. where you say, "Give me leave to Repeat
"an Observation I have made already, that
"before this time (that is, of *Edw. IV.*) tho'
"others Pretended a better Right to the
"Throne, than the Person that Possess'd

it,

“ it, yet they never assum’d the *Regal Title*
 “ against the *Regnant King*,

But notwithstanding this Remark, *Edw. III.* took the Title of *King of France*, and his *Successors* have kept it on to this Day against all the *Regnant Kings* that have been since in that Kingdom.

Maud Daughter of *Hen. I.* took not the Title of *Queen*, because she had that of *Empress* which was Higher. And she kept the Title of *Empress* as well after she was *Recogniz’d* by the *English*, as before.

Hen. II. her Son, cou’d not take the Title of *King*, because in his *Mother’s* time he had made a *Compromise* with *K. Stephen* to let him Enjoy the *Crown* during his Life, and was thenceforward call’d *Heir* to *K. Stephen*.

Then for the *Heirs* of *York*, they had submitted to *Hen. IV. V. and VI.* And so cou’d not take the Title of *Kings*.

And their *Children* who set up their *Claim*, after 60 Years Possession of the *Lancastrian Line*, took not presently that Title which their *Fathers* had not, in whose *Right* they *Claim’d*, but were Content to *Win* it first by the *Sword*, before they *Wore* it. Which seem’d the most Prudent Course, because the Issue of *War* is Uncertain.

And here we may Observe two things by the way, *First*, That whoever has Right to a *Crown* cannot Hurt his *Heirs* by any *Submissions* he can make.

Secondly, That *Usurpation* even for three Score Years together, do’s not Extinguish the *Right* to the *Crown*.

But *Edw. IV.* who was the first of the House of York that Recover'd the Crown, after this long *Usurpation*, took the Title of King, when the *Earl of Warwick* Join'd him, even while he was out of Possession, and in Order to Recover his Right.

Queen *Mary* whose Father was King, took the Royal Style before she got into Possession, and while another *de Facto Queen* was upon the Throne.

In like Manner King *Char. II.* Assum'd the Royal Style from the Day of his Father's Death.

But ther is another thing might hinder the Claimants of York to take the Name of Kings before they got into Possession, which was the Custom of those times, wherein it was not Usual for Kings to take that Style, till they had Receiv'd the Benediction of the Bishop at their Coronation. As it is said, *Benedixit eum in Regem.* The Bishop Blessed him to be a King.

For Kings holding the Crown from God, thought themselves Oblig'd to Receive it from the Hand of the Minister of God.

But in those Popish times the King's Right was not thought Compleat, till the Church had own'd him. This was one of Becker's false Principles. See *Collier's Church Hist.* p. 359. and 374. and *Hubert Arch-Bishop of Canterbury* his Speech to *K. John* at his Coronation, in *Mutth. Paris.* And *Lambard* in his *Saxon Laws*, p. 142. Mentions a Letter of Pope *John*, that the King should Swear to Defend Holy Church;

Church, &c. before he be Own'd by the Arch-Bishops, Bishops, &c.

This was *Popish* Error, for tho' the King receives his *Crown* from the Hand of *GOD's Minister*, to shew that he holds it from *GOD* alone, yet his *Right* is not from the *Minister* but from *GOD*. And the Title of *King* and all the *Regal* Power belongs to him from the time that his *Right* Commences, that is, from the Death of his *Predecessor*, not from his *Actual Possession*.

But to come to a Modern Instance now before Us, did not our present *Charles* take the Title of *King* of *Spain* before he was in *Possession* of a foot of it, and while *Philip* was in *Quiet Possession* of the *Whole*?

In short, Mr. *Higden*, this *Criticism* of yours Signifies nothing, for in all Times, as well before as since the Contest of *York* and *Lancaster*, whether the *Competitor* took the Name of *King* or not, it is Plain he thought he had a *Right* to make *War* upon the *Possessor* who Detain'd it from him. And so must all they think who took his Part and Fought for him. Which will be Abundantly Sufficient to Confute your *Hypothesis*, that *Possession* do's Extinguish *Right*, and that this was the *Universal* and *Receiv'd* Opinion.

And the General Compliance with the *Three Henrys* will not make out your Point. Of which I have a Word more to say. For besides the Grounds they had to think that the *Right* of *York* was Utterly Extinguish'd, by their *Submission* for so long a time, of which I spoke before.

Another Consideration in favour of our *Ancestors* in those Times, may be the Great *Power* of the *Popes* in those Days, who took upon them to Dispose of all *Crowns*, particularly that of *England*, which they once had put in Subjection to them by King *John*. And these own'd the *Three Henrys*, which must go a great way with the Generality of their *Popish* Subjects, and they were all so then.

And this might Carry too with that *Pious* Man *Hen. VI.* who said his *Prayers*, and perhaps thought not himself an *Usurper*, because those about him Told him so, and gave him Leave to *Repent* no further than they thought fit. They carry'd him up and down, and made him Quit the *Crown*, and take it again, just as suited their *Designs*. For he only *Reign'd*, they *Govern'd*.

Again, both *Edw. II.* and *Rich. II.* had sign'd formal *Renunciations* of the *Crown*. And tho' this was not without *Force* upon them, yet every body might not Understand that, to whom their *Renunciations* were Proclaim'd. At least you will say, That the Case had not been Exactly the same, if None of these things before Mention'd cou'd have been Alleged, no *Resignations*, no *Submissions*, or so much as any *Imply'd* giving up of their *Rights*.

But if they thought that Notwithstanding of all these *Pleas*, yet that the *Right* cou'd not be *Defeated*, then that *Age* will be a *Precedent* of the most Inflexible *Loyalty*, which the *Usurpations* for 60 Years Continuance together, nor *Success*, nor *Prescription*, nor *Acts* of *Parliament*; no, nor the *Submissions* or *Resignations*

signations of those who had the *Right* cou'd Abate! They saw these were not *Free* and *Voluntary*, therefore wou'd lay no Stress upon them. They thought Themselves, as well as the *Prince* Concern'd in the *Rights* of the *Crown* and its due *Succession*. And therefore Contended for it, as for their own *Rights* and *Liberties*.

Therefore this Dispute cou'd never End, till the *Right* was at last *Restor'd*, tho' they Waded through an *Hundred Years* of *Blood* for it.

And is this the Age, Sir, that you have Chosen to shew that *de Facto* was always thought *de Jure*, and that they never look'd further than to the *King* in *Possession*? Whereas all these *Wars*, and every *Battle* that was fought, was against the *King* in *Possession*, and against him only.

But, Sir, let me give you a Present Instance fresh before our Eyes. King *Augustus* did even Literally *Abdicate* the *Crown* of *Poland*, he Renounced the *Title*, Quit the *Kingdom*, and left them to themselves. And *England* and *Holland* are *Guarantees* of the *Treaty* of *Alt Ransted* by which he did *Abdicate*, and at his own Desire. And *Stanislaus* was Chosen into the *Vacant Throne*, by what they call'd the *Voice* of the *People*, and was owned by Neighbouring *Princes*, particularly by *England*. Yet all this Notwithstanding, a Great Party there, even the *Crown General*, because they saw ther was a plain *Force* upon King *Augustus*, did not think themselves *Absolv'd* from the *Allegiance* they had *Sworn* to him, even in an *Elective* *Kingdom*, but stuck to him, and having Removed the *Force*, now Re-

ceive him again as their Lawful King, and Reckon Stanislaus an Usurper. For tho' there was a Pretended Election of the People, yet it was under the Influence of a Foreign Prince, with an Army of Foreigners. And King Augustus tells Us now in his Manifesto, That he could not Abdicate without the consent of the States.

(11.) You say, p. 87. *That whosoever stands Excluded by the Legislative Authority, whatsoever they may have had, have now no longer any Right or Title to the Crown.*

I will not say of what it is Now. But I will go to that Age whence you bring your Precedents, and I will shew you, in the Compass of Half a Year, one Parliament Proclaiming Edw. IV. an Usurper, and Hen. VI. the Lawful King: And another Parliament Proclaiming the same Edward the Lawful King, and Henry the Usurper. And so it wou'd have been ten times a Day, if the Fate of War cou'd have Turn'd so often. For None of these Competitors ever Gain'd the Field, but they got a Parliament to Confirm their Title. Now, according to you, both these Parliaments were alike Lawful, for both were under Kings *de Facto*. And you might have Sworn to Henry and Abjur'd Edward, and Sworn to Edward, and Abjur'd Henry, both as it were in the same Breath! Both Right, and Both Wrong! King and No King, before one can Act the Play out! This is very like the Case of Frontier Towns (which you too Urge as a *Salvo* for Oaths) but why then will you set up any
Right

Right but that of the *Sword*? Suppose a Man shou'd get a *Crown* by the *Sword*, and Never heed a *Parliament*. Wou'd it be a good *Title*, or not? If not, then their wants Something besides *Possession* to give *Right*. But if it is a good *Title* (for it is *de Facto*) then what Signifies a *Parliament*? But *Parliaments* are so Easy to *Conquerors*, that every one will have them, to *Cajole*, and *Pump* the *People*, and make them Fancy themselves *Free*! Let the *Parliament* do the *Hard* things, and all the *Gracious* things come from the *Sovereign*. A *Wise King* will never be without a *Parliament*.

(12) But how came you to lay so much Stress upon *Parliaments*, when you put the whole *Legislative* in the *King*? You Mention the *King* and his two *Houses* of *Parliament* sometimes, but you Prove it as to the *King*. You say, p. 23. *The Legislative Power is in all Forms of Government Essential to the Supreme Power (in a Monarchy to the Regal Power) and Inseparable from it.* Pursuant to which you Undertake to Prove in the same Page, *That Kings, as well by Statute Law, as Common Law, have the Legislative Power of this Realm.* And p. 22. You begin this Chapter saying, *Having shewn that the Legislation of Kings is own'd to be good at Common Law—* And p. 52. you say, *That the Sovereign Authority of the English Government, as well Legislative as Executive, hath been ever Acknowledged, both by our Laws and Lawyers, to be Lodged in the King; and that the Allegiance of the Subject has been due to Him, and to Him Alone.* And p. 65. *That the Kings have ever*
been

been own'd for Legislators in our Constitution. Hence in your Title Page you call it the Sovereign Authority of the Prince. And the Contents of your Chap. i. are, *The Supreme Authority of the English Government rests in the King.* In the Contents of Chap. ii. you slip in the *two Houses of Parliament.* But then again you give the Contents of Chap. iii. The most Material Objections to the *Legislative Authority* of these *Kings* answer'd.

Now if the *Supreme Authority* be in the *King*, then can it not be *Limited* by *Parliament.* Because (as you say) it is a *Contradiction* to suppose a *Superior* to the *Supreme*, for then were it not *Supreme.* And all *Limitations* must come from a *Superior.* And therefore, as you add, the *Supreme Power* must be both *Legislative* and *Executive.* And both these are *Essential* to the *Supreme Power*, and *Inseparable* from it, and as you Express it, from the *Regal Power* in a *Monarchy.* And therefore, you Observe, that *Allegiance* is due to the *King*, and to him *Alone.* Ther can be no *Sharing* of this *Supremacy.*

And from this Doctrine which you have here laid down, it was perfectly Needless for you to bring in the *Parliament* at all into this Cause. Only for *Popularity!* Wou'd you make them *Judges* over the *Supreme?* But whoever has the *Power* will keep it while they can. In short, no *King* or *Constitution* whatsoever will Suffer any to *Judge* of them but themselves. And in a *Competition* for the *Crown*, ther is Nothing else to be done, but every Man to satisfy his own *Conscience* the best he can

as to the *Right* of the *Competitors*. But as to any *Judicial* Determination, ther can be None upon Earth. For that *Judge* wou'd be Above all the *Competitors*. And who is *Judge* among the *Gods*, but the Great *God* alone? *Parliaments* never yet Determin'd the *Right* of any *King*, till it was Determin'd to their hand by *Success*. And then they follow'd it as Naturally as the *Mobb* with their *Shouts*. The *Law* do's not *Make* the *King*, but *Recognizes* him. For how can any thing *Make* its *Maker*? And *Kings* were before *Municipal Laws* or *Parliaments*, for all these were made by *Kings*. Therefore we must look for the *Tenure* of *Kings* Higher than our *Municipal Laws*. And *Divines* not *Lawyers* are the best *Judges* in this *Case*.

(13.) Ther is a *Natural Allegiance*, which is by the *Law* of *God*, and is Antecedent to the *Legal Allegiance*, requir'd by any *Municipal Laws*, as Lord Chief Justice *Coke* tells you in *Calvin's Case*.

And the *Legal Allegiance* is but in Affirmance of the *Natural Allegiance*, and cannot Alter it.

This may serve as an Answer to your Chap. VI. p. 80. &c. Of the Reading of *Lawyers* upon the Import of *Seignior le Roy*. You Quote Lord *Bacon*, *Coke*, *Bridgeman*, and *Hales*. And say, p. 84. There was not the least Temptation to Byass them on this side (that is, your side) of the *Question*. But I except against this as to Two of them, that is, *Coke* and *Hales*. For *Coke* was plainly Chagrin after his Disgrace at

at Court, when from *Lord Chief Justice* he was made *Sheriff* of the *County*, and took to his Motto *Prudens qui Patiens*, which was put to his *Pictures* in the Year 1629. And it is Observ'd of him, That as before, he Wrote High for the *Prerogative*, he Lessen'd it as much as he Cou'd afterwards.

Besides his Second and Third *Institutes*, whence you bring your *Quotations*, are *Posthumous*, and not Printed till long after his Death about the Year 1644, at *London*, then Engag'd in *Rebellion* against the *King*, and how the *Copy* might be *Alter'd* or *Interpolated* to serve their Turn then we cannot tell, but ther is Cause of Suspicion, being Publish'd at that Time.

Then for *Hales*, he was a *Judge* under *Oliver*, as you may see in his Life by *Dr. Burnet*. And therefore ther lay, not the least *Temptation* in his way, to *Palliate* and *Smooth* over a *Cause* wherein Himself had been so far Concern'd.

But in his large Treatise of the *Pleas of the Crown*, which is in *MSS.* and left to be Publish'd after his Death (of which what is Printed are but Minutes) he Asserts most fully the *Right of de Jure* against *de Facto*.

But it is not for fear of any thing they have said, that I enter this *Caveat* against them.

Therefore I will look over the *Authorities* you Produce.

And first for my *Lord Bacon*. Let me Observe that he is of a Different Opinion from you as to the *Statute 11 Hen. VII.* for he thinks

thinks it was a *New Law*, and not in Affirmance of the *Old Law* as you say it is. And I am of your Opinion, as I will shew when I come to Consider that *Statute* in *Section 16.*

But now as to the Point before Us. Your Quotation of Lord *Bacon*, p. 81. says no more than, *That it was agreeable to Reason of State* (at that Time, in the Reign of *Hen. VII.*) *that the Subject should not enquire into the Justness of the King's Title.*

This was very Agreeable then to Reason of State (for my Lord speaks now as a *States-Man*) because if the Subject had Enquir'd into the Title of that King, they would have found it altogether Bad. But must Subjects therefore never Enquire? Is not your Book an Enquiry into the Titles of Princes? Must nothing be done to Satisfy Conscience? Or have the Subjects no Conscience? Must they not Enquire into the Title of a *Massaniello*, or an *Oliver*, but take all upon Content they find in Possession!

As for the Conscience part of the Quotation, *That whatsoever the fortune of the War was, the Subject should not Suffer for his Obedience*—No. But for his *Disobedience* and *Rebellion*. And this has ever been thought Agreeable to good Conscience.

As to the Example he brings of *David* in the Matter of the *Plague*, it makes against him, for God determin'd it quite otherwise. He spar'd the King and Punish'd the People, tho' it was for the Sin of the King.

And

And this affords Us an Observation I suppose will not be Unpleasing to you, of the Near Relation God has plac'd betwixt King and Subjects, as betwixt Parent and Child; That as the Sins of the Parents are Visited upon their Children to the Third and Fourth Generation, so are the Sins of Kings upon their Subjects. Tho' it is likewise a Punishment to those Kings and Parents whose Subjects and Children are Destroy'd. But this Teaches Us the Obedience to Kings in a very High Degree. And that the Relation betwixt King and Subject is not to be Dissolved barely by Possession, more than that of Parent and Child. Suppose a Man came to Ravish your Mother, and you Defend her all in your Power. But at last you are both overcome, and the Usurper gains Possession, and she Attunes to him. Wou'd you then fight for the Possessor against your Father, and tell him his Right was Extinguish'd?

The Case is Parallel, if the Obedience to Kings is as strongly Enforc'd upon Us by God, as Obedience to Parents. Which I believe you will not Deny. And that Kings Represent the Person of God to Us more than our Natural Parents; who are not call'd Gods, and the Anointed of God, as King, are. And are themselves Subject to Kings.

I come now to your Quotation from Coke, p. 81, 82. who says, That a King *de Facto* and not *de Jure* is *Seignior le Roy* within the Purview of the Statute 25 Edw. III. c. 2. And that a Pardon granted by a King *de Jure*, who is not also *de Facto*, is *Void*.

Before

Before I answer this, let me take Notice, That he makes a plain Difference betwixt a King *de Facto* and a King *de Jure*, and supposes a King out of Possession to be still King *de Jure*. Which is Directly Opposite to your Principle, That Possession do's Extinguish the Right, and that the Dispossessed Prince has no Manner of Right whatsoever, as you say, p. 87.

And now in Answer to Coke, I Oppose to his Authority that of the Parliament 1660. See their Proclamation Dated May 8. 1660. wherein they Declare, That his Majesty's Right and Title to his Crowns and Kingdoms, is, and was every way Completed by the Death of his Most Royal Father—— Without the Ceremony or Solemnity of a Proclamation, &c. And that Immediately upon the Death of his Father, the Imperial Crown, &c. did by Inherent Birth Right, and Lawful and Undoubted Succession, Descend and Come to him, as being Lineally, Justly, and Lawfully, next Heir of the Blood Royal of this Realm.

And as his Right was every way Completed, tho' out of Possession, so he did Exercise it too, and Granted Pardons before his Restoration, which held Good, and were not Void, as Coke says. He executed one for Treason, while he was Abroad, He gave Titles of Honour, and did other Regal Acts, which never were Question'd afterwards, nor Confirm'd, as needing any other Authority. Now I say to Coke, That if the Right Heir has a Power to Pardon tho' Unpossessed, he is by Consequence Seigneur le Roy, tho' Unpossessed, for

for by the *Constitution* none can *Pardon* but the *King*.

Your next Quotation is from the Lord Keeper *Bridgeman*, at the Tryal of the *Regicides*, where *Cook* who was a Lawyer pleaded the *Statute* 11 *Hen. VII.* But was Answer'd, That what he did was against his *King*, and that they Call'd him *King* in the Charge at his Trial, *Charles Stuart King of England*. But what sort of a *King* was this? Was he a *King* in Possession? When his Neck was upon the Block the Executioner call'd him his *Majesty*. Was he a *King* then? Not *de Facto* certainly. It must be therefore a *King de Jure* which the Lord Keeper *Bridgeman* meant. And he pass'd Sentence upon these *Regicides* for their *Treason* against a *King de Jure* tho' then *Dispossessed*.

The Lord Chief Justice *Hales* says, as you Quote him, p. 84. *That the Right Heir of the Crown, yet not in Possession, is not a King within this Act.* To which I have spoke already. Only Observe that he calls the *Heir* out of Possession the *Right Heir*. Whereas you allow him no *Right* at all, nor to be any *Heir* to the *Crown*.

But, Sir, as to the Opinion of *Lawyers*, you will find more against you, than for you. See *Calvin's Case*. The *Case del Union*. And *Clark and Watson's Cases*.

I wou'd Ask one Question. During the Contest betwixt Queen *Mary* and the Lady *Jane*, which of them was *la Reign*, and within the Purview of the *Statute of Treasons* 25 *Edw. III.* According to *Coke* and *Hales*, Queen *Mary* was then

then only the *Right Heir*, but not in *Possession*, and so not within the Purview of that *Statute*. But for all this those who Acted against her in that time were Executed for *Traitors*, and tho' they did it under the Shelter of a *Queen de Facto*.

If you say Neither of them was *Queen* till the Matter was Settled, then no *Treason* could be Committed against Either, for ther is no *Treason* but against the *King* or *Queen*.

The King never Dies. Therefore one of them must be *Queen*. If it was *Jane*, then you cannot Deny but she was *Queen de Facto*. And not in *Fieri*, as you *Distinguish* it, p. 68. And I must mind you of that *Maxim* you Repeat so often, *Ubi Lex non Distinguit*— That we must not *Distinguish* where the *Law* do's not *Distinguish*. Therefore you must shew this *Distinction* in the *Law*. And I believe the *Law* knows no such thing as a *King in Fieri*. It must be *King* or *No King*, eithêir *de Facto* or *de Jure*.

But if *Mary* was *Queen*, then here is a *King* (or *Queen*) out of *Possession*, and who never was in *Possession*, (as *Queen Mary* never had been at that time) and yet within the Purview of the 25 *Edw. III*. Here is *de Jure* Expressly Prefer'd to *de Facto*, and the Cause of *Right* Determined against *Possession*. Here is the *Hereditary Succession* Maintain'd against *Usurpation*. Here is not only the *Abettors* of *de Facto*, but the *Queen* her self Executed for being *de Facto*. And if *Rich. III*. had Surviv'd the Battle of *Bosworth* he had been another Example; but he was *Attainted* after his Death as

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But if *Mary* was *Queen*, then here is a *King* (or *Queen*) out of *Possession*, and who never was in *Possession*, (as *Queen Mary* never had been at that time) and yet within the Purview of the 25 *Edw. III.* Here is *de Jure* Expressly Prefer'd to *de Facto*, and the Cause of *Right* Determined against *Possession*. Here is the *Hereditary Succession* Maintain'd against *Usurpation*. Here is not only the *Abettors* of *de Facto*, but the *Queen* her self Executed for being *de Facto*. And if *Rich. III.* had Surviv'd the Battle of *Bosworth* he had been another Example; but he was *Attainted* after his Death as

a *False Traitor*, &c. for his *de Facto*ship, and by the Name of a King *de Facto*, and for having been so.

And is it not very strange, Mr. *Higden*, That the *Law* (as you say it is) should know of no other King, nor Allow of any other but a King *de Facto*, and should Purge him of all *Defects* by the *de Facto* Descent of the *Crown* upon him, and Defend and Justify him against *de Jure*, nay *Extinguish* the *de Jure* in the *Right Heir*, and Transfer it to the *de Facto*, with the *Allegiance* of all the *Subjects*, tho' Sworn to the *Hereditary Succession*, and Transfer these *Oaths* too to the *de Facto* against whom they were made: And yet after all this, should *Attaint* and *Execute* these same *Princes* for being *de Facto*, and for that only? And say at the same time that the King can do no *Wrong*? Is ther a *Paradox* in the World, if this be not one? I leave this to your Cooler thoughts to Consider. For if *Acts of Parliament* may be made in a *Heat*, as you say, and therefore not to be Regarded: May not You or I *Write* in a *Heat* too, and be apt to *Over-shoot*? And some *Lawyers* may be in a *Heat* too, and *Strain* the *Laws*. And whatever Kings *de Jure* are, it is Certain that *Usurpers*, who are *Ravishers*, are always in a *Heat*. And if they Succeed, will Force the *Laws* to Bend to their Bow. *Hen. VI.* and *Edm. IV.* *Attainted* one another, and *Annul'd* each others *Laws*, as the *Victory* turn'd. And what is the Meaning of *Lawful King* so often used in our *Laws*? For ther can be none *Unlawful*, if the *de Facto* Doctrine be true.

(14.) No *Usurper* can come to the *Crown* but by *Ravishing* the *Municipal Laws*, these are in his Power, and he can make them speak as he pleases. Ther is not one Exception. And tho' you like not the *Rape*, because it was against *Law*, yet you *Justify* it and the *Ravisher* too when it is done, and are for Maintaining his *Possession* against the lawful *Husband*, because the *Laws* are *Conquer'd*, and must do so too! If *Monmouth* had *Prevail'd*, the *Laws* wou'd have *Hang'd* those who Fought against him: And if Another had *Miscarry'd*, the *Laws* wou'd have *Hang'd* those who Fought for him. What a *Weather-Cock* have you made *Guide* of your *Conscience*!

If the *Laws* must be *Judge*, let it be when they are *Free* and not under *Force*. And shew me that Time if you can. Shew me that *Government* or *Constitution* ever yet that wou'd Suffer the *Laws* to be Pleaded against it? Wou'd Old *Oliver*, or any other *Oliver*? Wou'd the *Commonwealth* of *England* let you ask the *Legality* of their *Constitution*? So that tho' you wou'd by no Means have had any hand in the *Murder* of the *King*, or the *Expulsion* of his *Son* *King Char. II.* Yet you wou'd be *Oblig'd*, by your New *Principles*, to have Fought against him, and Endeavour'd to have hinder'd his *Restoration*.

But, Sir, ther is a Case nearer Home, which I think will come up to all your Positions: By the *Statute* 1 *Will.* and *Mary* Sess. 2. c. 2. And 12 *Will.* III. c. 2. "A King or Queen
" who shall turn Papist, or Marry a Papist
" shall be Excluded, and be for ever Unca-
G 2 pable

" pable to Inherit, Possess, or Enjoy, the
 " Crown and Government of this Realm, &c.
 " And the People of these Realms shall be,
 " and are herereby Absolved of their Allegiance,
 " and the said Crown and Government shall
 " from time to time Descend to and be En-
 " joyed by such Person or Persons, being Prote-
 " stants, as shou'd have Inherited and Enjoyed
 " the same, in case the said Person or Per-
 " sons, so Reconcil'd, holding Communion, or
 " Marrying, as aforesaid, were Naturally
 " Dead.

Now Suppose any or our *Kings* or *Queens*
 should hereafter turn *Papist*, or *Marry* a *Pa-*
pist, I ask you, Mr. *Higden*, whether by this
Law such *King* (or *Queen*) wou'd not Forfeit
 his *Right* to the *Crown*, and all the *Subjects* be
Absolv'd of their *Allegiance*?

And then, Secondly, whether the *Law* would
 not make it *Treason* in any who took *Arms*
 against such a *King*, while he kept *Possession*?
 And then how should he be put out of *Pos-*
session? The *Law* puts him out of *Possession*, as
 if he were *Naturally Dead*. Yet Maintains his
Possession, by making it *Treason* to take *Arms*
 against him. And do you think he could not
 get *Judges* (since he had the making of them
 all) to Declare this to be *Law*? Take up now
 the Authority of *Judges* in *Revolutions*, with
 which you fill your Book. And if these *Judges*
 Survived till another *Revolution*, and that the
Right came to take place, do you not think
 they would be inclinable to *Palliate* and *Mol-*
lify and put the best Face upon their former
Practice all that they could? Would they not
 Plead

Plead *de Facto*, and the 11 *Hen. VII. &c.* And yet do you think that the *Protestant Heir* had the *Right* all this while? Or would you be for the *Popish Possessor* against him? If so, you must think this a *Void Law*, or made in a *Heat*, as you say of others.

And you must not make the *Law* the Measure of your *Allegiance*. For here the *Law* Absolves you from your *Allegiance* to the *Possessor*, and Transfers it to the *King de Jure*; And yet you will still Stick to the *Possessor*.

Or else you must Quit your *Book* and all you have said in it, and Retract the *Maxim* with which you Conclude it thus,

And to End where I began, since the Laws, which are the Rule of Civil Subjection, require This, that is, our Allegiance to the King de Facto,

Oportet Neminem esse Sapientiores Legibus.

And will you be wiser than this *Law*, which Determines expressly for *de Jure* against *de Facto*, as much as *Law* can do?

For if a King in *Possession* be *Irresistable*, then this *Law* was made in vain. But if he may be *Resisted* and set aside, than bare *Possession* is no Foundation for *Legal Right*. And if so, the *Royal Title* and actually *Administration* of the *Government* can give him no Just Claim to the *Allegiance* of the *Subject*. The 11 *Hen. VII.* can do him no Service, for in the Eye of the *Law* he is not the King for the time being. For when the *Law* Determines his *Reign*, and Extinguishes his *Authority*, he has no more Pretence to the *Allegiance* of

the *Subjects*, who are by this *Law* Absolved from their *Allegiance* to him.

But if Breach of Conditions in a *King* is Sufficient to Unmake him, why should the Breach of *Loyalty* in a *Subject* be thought Sufficient to make him a *King*? But this is the *de Facto* Doctrine. For if a *Rebel* proves Succesful and Snatches the *Crown*, his *Violence* gives him a Good *Title*, and he becomes a *Legal* Monarch, according to this *Principle*. And no former *Laws* or *Constitution*, or *Acts* of *Parliament* can stand in his way.

But, Mr. *Higden*, you have no Regard at ail to the *Constitution*, or *Acts* of *Parliament*, tho' you Build all upon them. For pray tell me, is ther not something *Essential* to the *Constitution* of a *Parliament*? Else what need *Qualifications*, without which, Men are *Disabled* to sit in *Parliament*? Otherwise any *Company* of *Men* may call themselves a *Parliament*, tho' called together without any *Lawful Authority*; Nay, in direct *Opposition* and in *Rebellion* against the *Lawful Authority*. And then the *Rump*, &c. were *Lawful Parliaments*. For thus you Describe their Power when once they are got into *Possession*, and say, p. 87.

“ They can do any thing by *Virtue* of the
 “ *Supremacy* of their Power, which cannot be
 “ Bound by any prior *Law* or *Settlement* (for
 “ then the *Supreme* Power, wou'd be *Superior*
 “ to its self) cut off and *Extinguish* Old
 “ *Rights*, and Create and *Establish* new *Legal*
 “ *Rights* and *Titles*, not only to private In-
 “ heritances, but to the *Crown* it self—— So
 “ that whosoever stands *Excluded* by the *Le-*
 “ *gislative*

“ *gislative Authority*, whatsoever they might
 “ have had, have now no longer any *Right* or
 “ *Title* to the *Crown*.

If you say, That the *Legislative Authority* of the *Commonwealth* of *England*, was only *de Facto*, but not *de Jure*, you overthrow all you have said. And if you wou'd have been for *K. Char. II.* against that *Commonwealth*, you wou'd have fought for *de Jure* against *de Facto*. But I know not whether you wou'd or not? So I will not put this upon you.

Only let me speak as to your *Argument*. And there I find you put more in your *Conclusion* than was in your *Premises*. Your *Premises* speak only of *Legal Rights*, whence you Infer in your *Conclusion* to any *Right* or *Title*, as if ther were no other *Right* but what we call *Legal*. Whereas the *Law* do's only *Recognize* the *Right* of the *Crown*, not *Make* it; for the *Crown* is *Prior* to the *Law*, and *Above* the *Law*, as has been said. And the *Law* can take away no *Right* but what it Gives. And if it shou'd Cease to *Recognize* the *Right* of the *Crown*, and you shou'd call this a taking away its *Legal Right*, it will not therefore follow, that it has no *Right* or *Title* at all. It has still that *Right* which is *Prior* to the *Law*, and *Independent* of the *Law*. Even the same *Right* it had when it made the first *Law*. And against which if any *Law* be made, it is *Void* in the Nature of the thing, as well as so own'd by our *Law*, which I have before shew'd, p. 17, 18.

The *Supreme Power* may (as is there said) *Dissolve* it self, but cannot *Limit* it self. It may *Alter*

any Part of the *Constitution* which is not *Essential*. As a Man may Cut off an *Arm* or a *Leg*, but if he Cuts off his *Head*, he is no longer that *Man*. Thus when the *Commonwealth* Dissolv'd *Monarchy*, it was no longer that *Constitution*. Therefore our *Constitution* cannot, as you say, Mr. *Higden*, Cut off and Extinguish the *Right* of the *Crown*, without a total *Dissolution* of the *Constitution*. Which I suppose you will not *Adventure* to say, after what Dr. *Drake* did suffer for it.

And if a *Just* and *Legal Constitution* cannot Alter some things without Destroying it self, much less can an *Usurped* and *Illegal Constitution* (such as was that of the *Commonwealth* of *England*, and other *Usurpations*) have such an unbounded *Authority*, to Remove all Ancient *Land-Marks*, tho' Placed by *God* Himself!

(15.) In your *Chap. V.* in Answer to the *Act* of Recognition of K. *Jam. I.* You own that the *Crown* descended on him by *Inherent Birth-right*, and *Proximity of Blood*. And that the *Parliament* did promise and think their Obedience due to him, and to his *Royal Progeny* and *Posterity* for Ever. But you have not put in these Material Words, being *Bounden* thereunto both by the *Laws* of *God* and *Man*. Where by the *Laws* of *Man*, I suppose was not meant the *Municipal Laws* of *England* only, but the *General Law* of the whole *Earth*, in former *Ages* from the Beginning, as well as at this *Day*, concerning the Descent of *Crowns* by the *Proximity of Blood*. And by the *Laws* of *God*, no doubt Reference is made to the Holy *Scriptures*.

Scriptures. So that we must Advise with others besides *Common Lawyers* in this Matter.

But you own this *Hereditary Right*. Only, say you, what if they shou'd be *Dispossessed*, and others get in? And you think it was not enough for them to have Asserted this *Right*, but you say, p. 70. *It had been absolutely Necessary for them (the Parliament) to have Declared and Enacted, that the Subjects should never hereafter Swear or pay Allegiance to any but Hereditary Kings; that no Statutes for the time to Come should be valid, but such as were made by them.*

Really, Sir, this is a pretty Odd Proposal. It is the same as for a *Law* to be made that ther shou'd be no more *Conquests* or *Usurpations*. No doubt the *Laws* Intended it, and were made for that Purpose. But to say that they never shall be, wou'd look very *Foolish*! Is the like done in any other Case? We have *Laws* against *Murder*, *Adultery*, *Treason*, &c. But do's the *Law* say, That ther never shall be any *Adulterers*, or *Robbers*? Why then shou'd it say, Ther shall be no more *Traitors*?

But suppose such a *Law* were made, wou'd it Cure you, or have hindred you from what you dave done?

Would not that *Clause* be *Void* in it self, to Limit the Power of after *Parliaments* from *Repealing* it? Or to say, That no *Statutes* should be *Valid* but such as were made by *de Jure*? For does not every *de Facto* call it self *de Jure*? And who Dare dispute it with *de Facto*? Would you, Sir, in the Mind you are of

of Now? Otherwise to what Purpose do you Propose it, and call that *Absolutely Necessary*, which wou'd be perfectly *Vain* and of no *Importance* in the World?

For if the *Laws* were Stuck to as the *Rule*, ther could never be any *Usurpation*, or *Rebellion*.

And if the *Law* were so Worded as you Propose, would that hinder *Rebels* and *Usurpers* to Break through it? Or others to own them when they had once gotten into *Possession*?

Will you Disown that *Possession* which is Obtained by Committing a Violence upon the *Law*? Then we shall soon have done!

And if it is Impossible for any *Rebellion* or *Usurpation* to be, without Committing a Violence upon the *Laws*, then are they not Plain enough Worded?

Can you produce any *Law* which says in Plain Words, That we ought to Submit to *Rebellion* or *Usurpation* if it Prevails? And may not I say, That this is as *Absolutely Necessary* for your Sense of the *Laws*, as you say the other is for mine?

But these are wild Fancies. The *Law* tells Us our *Duty* plain enough. And that in *Hereditary Monarchies* the *Crown* descends to the *Heirs*. And tho' the *Law* must always *Vail* to *Possession*, (because it speaks out of the Mouth of *Judges* in *Possession*) yet when the *Right* recovers, it will Punish those who Oppos'd it. This was Always done, in all the *Turns* of *York* and *Lancaster*, and in all other the like since the World began. Which shews, That
None

None of them thought *Possession* against *Right* was any *Plea* at all. If that had been the *Rule*, the Dispute of *York* and *Lancaster* cou'd not have lasted a Day. Nay, ther cou'd never have been any such *Dispute*.

You say, p. 79. That the Word *Heirs* was in the *Oath* of *Allegiance* from the time of *Edw. I.* This shews it was Always the *Rule*. And only tells Us the *Iniquity* of those *Times* whence you bring your *Precedents*. I see not what Advantage you can make of this.

(16.) I have taken no Particular Notice of the *Statute* 11 *Hen. VII.* of which you make so much Use. It is Answer'd in what go's before. It was made by an *Usurper* to secure those who fought for him. *Perkin* who pretended to be *Heir* of *York* being then in Arms against him. If *Perkin* had Prevail'd, it wou'd have signify'd little; However it was all the Security hecou'd give. *Valeat quantum*—For ther were Always such *Fools* as thought an *Act* of *Parliament* a Great Matter on their Side. The *Regicides* pleaded this very *Act*, but it did not Avail them. No nor all those neither who were under *Attainders* by *Hen. VII.* himself for fighting against him for the *King* in *Possession*, as the *Duke of Norfolk*, the *Earl of Surrey*, &c. as I will shew you presently.

Tho' you tell us, p. 47, 48. That those who fought for the *King* for the time being, Wanted no *Act* of *Parliament* to *Indemnify* them, Nor had they any. But you say in the next Words, *King Hen. VII.* indeed to *Quiet* their *Minds*, passed a *Pardon* for them under the *Great Seal*.

It

It seems then their *Minds* cou'd not be *Quiet*; till they had a *Pardon* some How or Other! So that this Notion of the Absolute *Security* of fighting for a King *de Facto*, was not so Universal as you wou'd have Us believe.

I observe that *Hen. VII.* here avoids the *Scandal* of being Call'd a King *de Facto*, which always means an *Usurper* when it is Us'd in Opposition to a King *de Jure*. But he puts in the Softer Word of King *for the time being*. As we say *Mayor* or *Sheriff* *for the time being*, and that may belong either to the *Right* or the *Wrong*, tho' the Meaning is easily Understood.

Hen. VII. having Marry'd the *Heirefs* of *York*, thought it now full time to put an End to that Mortal Division of the *two Houses*, which had Cost the Nation above an *Hundred Years* of *Civil War*, and as the History tells Us, spent *England* more *Blood* and *Treasure* than twice Conquering of *France*. The Great Men of the Nation were almost all *Attainted* on the One side or the Other. *Hen. VII.* wou'd not say that his own House of *Lancaster* were the *Usurpers*, but having now both *Titles* in himself, he had a Mind to take away all further Cause of Dispute, and to Indemnify those who had fought for the King *for the time being*, and to that End made this Healing *Act*. And with a Prospect too that his Son, if he outliv'd his *Mother*, had a better *Title* to the *Crown* than himself, he had therefore a Design to Secure the *Possession* of the King *for the time being* all that he Cou'd. And to that end put a Clause to this *Act* *Vacating* all after

ter *Attainders*, by *Parliament* contrary to the Tenor of the *Act*, and that all such after *Acts of Parliament* should be *Utterly Void*. Which speaks not much for the *Sense* of those who made that *Act*, as if it cou'd Bind after *Parliaments*. And the last Words are, *Provided alway, That no Person, or Persons shall take any Benefit or Advantage by this Act, which shall hereafter Decline from his or their said Allegiance*. Which looks as if it had only a *Retrospect* to Clear what was Past. But betwixt the Past and the Future *Prospect* that *Hen. VII.* had, this *Act* is perfectly Confus'd, and like a *Heathen Oracle*, may be taken in different *Meanings*, according to the different *Views* in which it may be Consider'd.

You say p. 64. That this *Act* of 11 *Hen. VII.* did not Introduce a *New Authority*, or a *New Allegiance*, but was made only in *Affirmance* of what was the *Law* before.

In this I agree with you. And it is the only Reasonable *Sense* can be put upon this *Act*. But then I am sure it go's upon *Hereditary Right*, and Allows not that bare *Possession* can Extinguish it, as I think I have shewed Sufficiently from our *Laws* before that time, as well as Asserted by all our *Laws* since. And therefore the King for the time being in that *Act* must Mean only the King *de Jure*, to which the *Lancastrian* Kings did Pretend, as well as those of *York*. And pursuant to this, *Rich. III.* was *Attainted* and the *Principal* Persons of his Party, 1 *Hen. VII.* And therefore he did not come under the Meaning which *Hen. VII.* Intended by a King for the time being, tho' he was Certainly a King *de*
Facto,

Facto, and *Hen. VII.* called him so (as you your self have Quoted, and I have Mention'd before p. 51.) a King *in Deed* but not of *Right*.

And do you Fancy that *Hen. VII.* Meant by this *Act* to Exclude his own *Children*, so that if any should Thrust them out, he Bound the Subjects to Adhere to the *Usurper* against his own Lawful *Heirs*? Do you Imagin this to have been his Intention, and not rather to Secure the *Crown* to his *Posterity*? Nay did he Design to Arm all his Subjects against Himself, and that none should Assist him, if he happen'd to be Un-horsed and another get into the Saddle?

But, Sir, you say, p. 74. That the King *for the time being* (meaning a King *de Facto*) with his *Parliament*, are Acknowledged to have the *Legislative* Power, by Kings *de Jure* and their *Parliaments* even Since the 1 of *K. James I.* Pray, Sir, do me the favour to let me know those Kings *de Jure* since *Jam. I.* who *Acknowledged* this? For to be sure you do not speak without Book. And I cannot find them.

(17.) You put a Material Objection against the *Security* of Fighting for the King *in Possession*, p. 47. in these Words, *That these Princes sometimes Attainted some of the Leaders of the Opposite Party, for Adhering to their Rivals.* To which you say, *But when they did this, their Constant way of Proceeding against such Persons was, by Attainders in Parliament ex post facto, and not by Indictments in the Ordinary Course of Proceedings, which shews I think (say you) at the same*

same time, that to serve the King in Possession was not a Fault, nor could be Punished as such, by the Laws that were then in force.

Ans. 1. This do's not follow. For if a King may either *Indict* or *Attaint*, he may do which he will. Was not *Monmouth* Indictable, because he was *Attainted*? Were not others in the same *Rebellion*, some *Indicted* and some *Attainted*?

2. This was not the *Constant* way of *Proceeding*, for many were put to Death without *Attainders*. The Duke of *Somerset* and several other *Lords* and *Gentlemen* were put to Death, without *Attainders*, by *Edw. IV.* for fighting for *Hen. VI.* The Case was so Common on both Sides, that it is very Strange to hear you say this! They that *Fled* after *Battles*, or stood out in *Arms*, or were *Dead*, were *Attainted*, ther was no other way, and some others were so too. But it was far from being the *Constant* way.

3. Wou'd *Parliaments* *Attaint* Men for fighting for the King in *Possession*? What Opinion have you then of *Parliaments*? Or was it so Common a Notion as you say p. 48. That none thought he Needed a *Pardon* for fighting for the King in *Possession*? Many lost their *Lives* and *Estates* for want of it. And for what other Purpose was the 11 of *Hen. VII.* made, but to Secure Men for Fighting for the King in *Possession*? If no Man had ever thought ther had been any need of it, that *Statute* had never been Made. And why do you make so much

much Use of it, if you think ther is no Need of it?

You say, p. 47. *Those who fought for the King for the time being* (you are speaking of *Rich. III.*) *wanted no Act of Parliament to Indemnify them.* And yet it is Evident that the Duke of *Norfolk*, the Earl of *Surrey*, and Five or Six more Persons of Quality were *Attainted* for Adhering to *Rich. III.* And my Lord *Bacon* says (*Hist. Hen. VII.*) that the Rest of his Party had been in the same Condition but for the King's *Pardon*. And that *Hen. VII.* Chose to Indemnify those of *Richard's* Party by his Royal *Pardon*, rather than by *Parliament*, that the *Clemency* might be wholly owing to Himself. But let those be *Attainted* in *Parliament* whom he had no Mind to *Pardon*. There was no ill *Policy* in that. Besides it was more *Solemn* and of more *Publick Example* than a *Private Tryal*.

But you say, p. 48. That they who Fought against *Rich. III.* for *Hen. VII.* had an *Act of Parliament* to Indemnify them. That was against another Day. For *Hen. VII.* was neither *de Jure* nor *de Facto* King, nor did Assume the *Royal Style* till after the Battle of *Bosworth* where *Rich. III.* was Slain. So that they did not fight so much as for a King *de Facto*, and therefore were very Lyable to be Question'd if another Turn had Come.

You say, p. 35. That *Edw. IV's Daughters* fled to Sanctuary to Secure their *Titles*. How could this be if *Possession* did Extinguish their *Titles*? The Nation thought *Hereditary Right* a better *Title* than *Possession*, for which Reason
the

the Marriage of the Earl of *Richmond* (*Hen. VII.*) to *Edw. IV.*'s Daughter was Concerted, in Order to *Dispossess* the Usurper *Rich. III.* And for the same Reason *Perkin Warbeck* was set up against *Hen. VII.* And the Lord *Stanley* who had set the *Crown* upon his Head, lost his own Head for saying, That if he believ'd *Perkin* to be the Son of *Edw. IV.* he wou'd not draw a Sword against him. And many of the *Nobility* who did believe it Adhered to him. And the Lord *Bacon* Observes, that *Hen. VII.* Died fortunatly for himself, because his Son might have set up his Mother's Title against him, if he had liv'd longer.

(18.) You bring an Argument, p. 74. for the Lawfulness of Submitting to a Prince, whom it was Unlawful to set up. And for this you Quote Scripture, and the Old Testament too *Deut. XVII. 14.* The only Place except one Text p. 102. where you Name it in your whole Book. But what was this Case? It was only that of Conquest, when Strangers got the Rule over the Jews; and then, say you, they Constantly Submitted to them. I must Allow it was Generally the Custom to Submit to Conquerors. For till Men Submit they are not Conquer'd. But this Word *Constant* puts you to Inconveniences. For tho' they Constantly Submitted; they as Constantly Revolted, whenever they cou'd get an Opportunity. As you may see in the History of the Judges; and of the *Maccabees*.

But you say further, That our Lord justify'd them (the Jews) in their Submission to the Stran-

ger that then Ruled over them, the Heathen Emperor Tiberius.

First as to the Submission of his Subjects in General. The Roman Empire was not then Hereditary. And where ther is no Right but Possession, no doubt Possession gives the Right. As you say, speaking of Tiberius, p. 90. The Submission of the Romans (Such as it was) was his only Title. Neither You nor I lay much Stress upon the Senate. But however he had that too, such as it was. And the *Lex Regia* whereby the Senate and People of Rome gave up the whole Authority of the Roman Government to Augustus, tho' it did not Descend to Tiberius as Heir, yet it did as Successor. And None was Wrong'd by his Assuming the Government, because None had any Right to it.

But now as to the Case of the Jews under Tiberius. Ther was None who Claim'd as Heir of David, for they all Submitted. So here was no Competition. But you say, p. 90, 91. That the Generality of the Nation, were, in the Mean time, in Expectation, that a Prince of the Tribe of Judah would shortly break the Roman Yoke, and Restore the Kingdom to Israel. And that Prince did come, and was then among them. And he too gave it up, and Commanded them to Submit to Tiberius, tho' He call'd Himself the Son of David. For the Time was then come, that the Scepter shou'd Depart from Judah, that is, from the Jews so call'd from Judah. And from that time to this Day the Jews have never had one of their own Nation to Rule over them, which they always had before,

before, tho' in *Captivity*, and *Subjection* to their *Conquerors*.

But you say, p. 91. " That our Saviour
" did not Resolve the Lawfulness of their
" Subjection to *Cesar*, into his *Right* to the
" Government of *Judaea*, but into his *Possession*
" of it; the Coining of *Mony* and Raising of
" Taxes, which our Saviour lays down, for
" a *Sufficient Ground* of their Subjection, be-
" ing no manner of Proof of the *Former*, but
" an *Undeniable Sign* of the *Latter*.

To which I Answer, That the Coining of
Mony and Raising of *Taxes* are indeed an Un-
deniable *Sign* of *Possession*, but, as you say, no
Manner of Proof of *Right*, that is, in an *Here-
ditary* Government. But it is a full Proof
of *Right* too, where ther is no other *Right* but
Possession, which I have shew'd to be the Case
here.

(19.) I have got now to your Chap. VII.
which you Intitle, *Our Laws in this Point not
Contrary to the Holy Scriptures and the Doctrine
of our Church, but rather Agreeable to Both*.
And here I was in Expectation that you wou'd
have gon into the the *Old Testament*, where
only is to be found the *Original* and *Founda-
tion* of Government as to all the *Earth*, and
particularly of that Government which God did
Establish among the *Jews*. But you have laid
this wholly Aside, and given Us only a Word of
the *Jews*, when they lost their own Government,
and were in Subjection to the *Romans*. I doubt
not you had Reason for this. For then you
wou'd have been Oblig'd to have taken Notice,
H 2 among

among many other *Exceptions* to your *Rule*, of the Flagrant *Instances* of *David* and *Absalom*, of *Joash* and *Athaliah*, and of others, where it is Plain that *Possession* did not give *Right*. And, keeping your Eye upon these *Cases*, I desire you wou'd *Answer* your own *Question* as to *Providence*, which you Ask near the End of this *Chapter*, p. 94, 95. " That after the
" *Divine Providence* has Placed, Permitted, at
" least, a Person to be placed in such a
" Station, that the Laws of the Kingdom
" acknowledge his Regal Authority, and Re-
" quire the Allegiance of the Subject to be
" paid to him. Whether to Refuse to Ac-
" knowledge him, for our King, or to pay
" Allegiance to him as such, is not to Oppose
" both *Providence* and *Law* ?

Then, Sir, you think that all who Adhered to *David*, and *Refused* to *Acknowledge* and pay their *Allegiance* to his Son *Absalom*, did Oppose both *Providence* and *Law*. And you Approve of the *de Facto* Plea of *Hushai*, 11 *Sam.* xvi. 18, 19. " Nay, but whom the Lord
" and this People and all the Men of *Israel*
" Choose, his will I be, and with him will I
" abide. And again, whom shou'd I serve?
" Shou'd I not serve in the Presence of his
" Son ? As I have served in thy Father's pre-
" sence, so will I be in thy Presence.

Here was the *Lord*, that was *Providence* !
And the *Choice* of the *People*, that was *Right* !
And serving in the Presence of his *Son*, that was *Regard* to the *Family* !

And if it be not too much trouble to you, you may Cast your Eye upon that saying of the
the

the Prophet, *Hof. viii. 4.* They have set up Kings but not by me; they have made Princes, and I knew it not.

And Conclude with *ii Chr. xxiii. 3.* Behold, the King's Son shall Reign, as the Lord hath said of the Sons of David. Yet *Athaliah* had been Seven Years in Quiet Possession, without so much as a Claim against her.

(20.) But you Mifs'd all this, and much more Trouble by Excluding the *Old Testament*. Having thus very Briefly Dispatch'd the *Scriptures*, you come next to the *Doctrine of our Church*, p. 95. where you stay as short a while. You give Us but one Quotation out of the *Homilies*, which is Blaming their *Popish Ancestors* in the time of King *John*, for Adhering to the *Pope* against him, and Swearing *Allegiance* to the *Dauphine of France*, to whom the *Rebellious Barons* had given the *Kingdom*, Contrary to the *Oath* they had taken to King *John*. Hence you Infer (else you can Infer Nothing) That the Composers of this *Homily* did in this Consider King *John* as an *Usurper*, and Justify'd the *Oaths* taken to him as such. But to my Apprehension they had not a bit of this in their View, but spoke of him here only with Relation to the *Claim* of the *Pope* and the *Dauphine of France*. In which Respect he was *Just* and *Lawful* and every thing against *Them*. And who wou'd not have fought for him against *Them*? And the *Oaths* they had taken to him might Justly have been Urg'd to those who set up the *Pope* or the *Dauphine*, not only against him, but all our *Kings* and

the *Nation* it self. The Dispute betwixt him and his Nephew *Arthur* was not here Consider'd at all. But *Arthur* had *Resign'd*, and besides was *Dead* before the *Barons* sent for the *Dauphine*. And his Sister *Eleanor* was a Prisoner in King *John's* hands, and her Life at his Mercy every Hour. So that ther was no *Claim* made by her or for her. And the Compliers of the *Homily* might think she was at that time *Dead* too. And so that King *John* was *Rightful* King.

In the same Sixth *Homily* against *Rebellion* ther is Mention made of the *Pope's* having Depos'd several *Emperors* and other *Princes*, and Absolv'd their *Subjects* from their *Allegiance*, as well as this Instance of King *John* in *England*. And we are not to suppose that the *Homily* meant any thing herein of what Dispute of *Titles* ther might be in any of these *Countries* among *Rivals* of their own. For the *Pope's* Claim was over all *Kings* and *Countries* whatsoever.

I shall only Observe, That this *Homily* attributes the Chief Cause of these *People's* being drawn so easily into *Rebellion*, to their Ignorance of the Holy *Scriptures*, not of the *Year Books*. And concludes thus, *In God's Word Princes must learn how to Obey God, and to Govern Men: In God's Word Subjects must learn Obedience both to God and their Princes.*

And may I not add, better than from *States-Men* or *Lawyers*?

Therefore, Sir, I desire that if you think fit to make any Reply to this, you wou'd give me *Quotations* out of the Holy *Scriptures*, to fortify

tifie your *Law-Cases*, for it will have more Weight towards satisfying *Conscience*. And I must still think that your *Talent* is better there than at the *Law*.

And that you may see how Exactly you agree with the Doctrin of the *Church of England*, please to Peruse the 10th Proposition of the 27 Condemn'd in the *Decretum Oxoniense*, in the following Words; " Possession and
" Strength gives a Right to Govern. Success
" in a Cause or Enterprize proclaims it to be
" Lawful and Just.

" To Justifie it is to Comply with the Will
" of God, because it is to follow the Conduct
" of His Providence.

Hobbs, Owen, Baxter, Jenkins, &c. are Quoted as the Assertors of this Pernicious Position.

(21.) I was sorry, Sr. to see you Chap. viii. p. 97. fall into that thread-bare Cant of our Commonwealth-men, That the several Communities of the World were not design'd, as so many Scenes for a few Persons to display their Glory in, and all the rest of Mankind to be only Instruments of their Power &c. Thence they Infer the Lawfulness of Resistance, when their Princes pursue not, as they think, the Ends of Government.

I know you Guard against this Consequence, p. 99, and 100. by shewing that this Remedy destroys the Thing, that is, Government, by making every Man Judge of it. But then to what Purpose was this Flourish? For your Principle of Submitting to the Usurper, only Changes the Person, the same Scene of Displaying Glory, &c. remains, and as Uncontroulable as the

Scene of Right. But with this vast Addition of *Encouragement* to *Rebellion* and *Usurpation*, That if it once Succeeds, all *Crimes* and *Defects* are Purg'd, and the *Right* upon which they have *Usurped* is *Extinguished* as to the former *Rightful Owner*, and Transferr'd to the *Usurper* and his *Heirs* for Ever. So that it is only being *Boldly Wicked*, and he is *Safe*! Whereas if he were made *Liabie* to be *Question'd* by the *Right*, and all Men *Oblig'd* in *Conscience* to stand by the *Right*, it wou'd be much more *Terrible* to *Usurpers*, than if they had but one *Push* to make for the *Whole*. And *Government* wou'd be better *Secur'd*. Else *God* and our *Forefathers* had never *Established* *Hereditary Monarchies*. To what Purpose *Hereditary*, if Thru-
sting *One* out of his Place, *Excludes* the whole
Line?

(22.) Has the *Crown*, whence all *Subjects* derive their *Rights*, has this *Fountain* of *Right* no *Right* at all it self? If a Man be *Wrongfully Disseis'd* of his *Estate*, he has a *Remedy* at *Law*. Does *Possession* against *Right* give a *Title* to nothing but to the *Crown*? *Unhappy Government*! Which of all things ought to be best *Settled*, is left in the most *Unsettled* Condition; *Floating* like a *Cork* upon the *Face* of the *Waters*, his own whoever can *Snatch* it first, or afterwards from any other that has it! And no *Remedy* for this, or any *Punishment*! But the *Greatest Reward* upon *Earth*! And to bind *Conscience* too! Is it a *Sin* to *Steal*? But when I see a *Thief*, may I *Consent* unto him, and be a *Partaker* with the *Adulterers*?

If

If *Possession* gave *Right* to *Goods* or *Estate* among *Subjects*, we shou'd think our *Property* in an ill Condition. And do we think that *God* has not Secur'd the *Right* of *Kings*, of His own *Anointed*, as much as the *Right* of the Meanest *Peasant*?

Is it not an Encouragement to *Steal*, to tell a Man All is his own he can Run away with; And that if he *Steal* the *Crown*, he may take it for his Pains?

If a Man *Steal* a *Groat*, is he bound to *Restitution*, but not if he *Steal* a whole *Kingdom*? And if he is bound to make *Restitution*, am I bound to assist him not to make *Restitution*?

If this be so only in the Case of *Kings*, then are they of all Men in the Worst Condition. But is ther any *Exception* in the Holy *Scriptures* which Excludes *Kings* from the Common Benefit of Mankind, that they only may be *Injur'd*, and no *Restitution* due to them? If not, then, Sr. remember the *Rule* you Prefs so often, That we must not be *Wiser* than the *Laws*, nor *Except* or *Distinguish* where they do not. And then you must make a New *Law*, and a New *Gospel*, a New Set of *Morals* too, for *Kings* only by themselves, to Alter the Nature of *Justice* as them, and New *Laws* for *England* likewise, for they are very Tender of the *Crown*, and give it the Preference before any *Subject* to Recover its *Rights*. It is Strange then they shou'd be so Remiss as to its Chiefest *Right*, and Hang it up as a *Crust* for every hungry *Dog* to Leap at, and make it his own who can *Snap* it first!

(23.) Your

(23.) Your last *Chapter* beginning at p. 100. tells us to p. 105. That the *Jews* Submitted when they were *Conquered*.

From thence to the End is concerning the Behaviour of the Primitive *Christians*. But as to the Present Case, you have Clear'd it at the Beginning, where you say, p. 105. " We " have no Instance of Dispossessed Empe- " rors claiming against their Rivals (except " it be that of *Maximinus Thrax* and his Son) " and the Empire not being *Hereditary*, there " could be no Claims of *Heirs*.

And you say we have no certain Account how the *Christians*, in the Earliest Ages of the Church behav'd under the Rival Emperors. So there is an End of that. But, p. 106. you say, That in the 4th, 5th, and 6th Ages We have several Instances of the *Christians* becoming Subjects to New Emperors, whilst the Dispossessed Emperor was alive. And giving two or three Instances of this Sort Ends your Book.

To all which I say, That he who has no Right but Possession, loses his Right with his Possession.

You cannot but be sensible that this Case is very *Foreign* to that of an *Hereditary* Monarchy. And as I cannot see to what End it was brought, so it wou'd be lost time to Examine these Instances which make nothing to the Purpose.

(24.) And now, Sr. upon the whole give me leave to Reason a little freely with you. When this *Topick* of Success against Right was first set up by Dr. *Sherlock*, as the Ground of his Conversion, it was Generally Dislik'd by the
Best

Best Friends to the Government. No Government can Like it. For as it Sets them up to Day, it Pulls them down to Morrow, if the Weather-cock comes About. It tempts Men to Betray every Government, but makes them Steady to None. This gave the *Vogue* to those Answers were wrote to Dr. Sherlock. And indeed, Sr. the Town says, you have added nothing New to the Argument, only given a few more Quotations out of the *Tear-Books*, which Alter nothing of the Case. You have Reviv'd a *Dispute* has been now Eighteen Years asleep, and brought People back to think, That the Government has no Right but Possession, and that Wrongfully come by; And that their Right Determines with their Possession. Which by no Means is thought any Service to the Government. And you are Referr'd back to those Answers wrote to Dr. Sherlock [particularly, *The Case of Allegiance to a King in Possession. 1690. Dr. Sherlock's Case of Allegiance Consider'd. 1691. An Answer to Dr. Sherlock's Case of Allegiance. 1691. The Duty of Allegiance settled on its true Grounds, &c. 1691.*] which are as much an Answer to you as to him.

You say in your Preface, p. 2. That you were very Free and Open in Discoursing with as many of your Old Friends, as were willing to talk with you upon this Head. And say, Could I not have solv'd their Objections, to my own Satisfaction, I shou'd have stood here; and these Papers, as they were never Intended for the Publick at first, had never seen the Light.

Sr. I know nothing of all this Matter. But when you were resolv'd to Print, you shou'd for the Satisfaction of others, have Answer'd those
those

those *Books* of your *Old Friends* which are in *Print*, and which neither *Dr. Sherlock*, nor any for him, have yet Attempted to *Answer*. But, without this, to set up his *Hypothesis* as a New thing, and not so much as to Name him, or the *Answers* had been made to him; but Refer to the private *Conversation* you say you have had with some Nameless Friends, is, Sr. by no Means Satisfactory to the Publick; which still wants a *Reply* to these *Answers*, till which be done, your Work, Sr. is not over. Others say, That if you had Intended your own *Conviction*, you wou'd have stay'd a While to See what might have been said even to this *Book* of yours.

But Men that Write *Paradoxes* expect not *Answers*. *Carneades* Wrote in Favour of *Injustice*, and another Great Man in Praise of *Folly*. But the *Elovements* of Exuberant *Wits*, must not Alter the *Nature* of things, and make *Wrong* to be *Right*, and *Right* to be *Wrong*! Or which is yet more *Monstrous*, That *Wickedness* by being Exceeding *Wicked*, that is, *Accomplishing* all its *Designs*, every Step against the *Law* of *God* and *Man*, shou'd by that, become Perfectly *Legal*, and *Right* too in the Sight of *God*, and Bind our *Conscience* to *Submit* to it, and *Support* it against what we own was *Notorious Right* and *Truth*! And which, because it is once *Overpower'd*, must never be *Afferted* or *Defended* any more! What had become of *Christianity* at this Rate?

But, Sr. you have all the *Moral World* too against you in this *Argument*. You know what
an

an Heathen Poet said, making pretty free with
their Gods,

Vitrix Causa Dijs placuit, sed Victa Catoni.

They wou'd not take the Decision of the Gods,
that *Success* cou'd give *Right*. But it is more
Strange in *Christianity*, which was to Overcome
by *Suffering*.

The *Mahometans* Plead it in Point of *Reli-
gion*. And why not? For what is *Religion* but
Right? And if the *Nature* of *Right* can be Al-
ter'd by *Success* in one thing, why not in ano-
ther?

The *Principle* of *Success* dissolves all Notion
of *Right* and *Wrong* out of the World. What
Prevails is *Best*! Whence some have Resolv'd
all the *Authority* of *God* over us into that of
Power only, without any *Regard* to *Justice*.
But *Abraham* was not of that Opinion when
he said, *Shall not the Judge of all the World do
Right*?

And may not I ask your little *Tear Books*
and a few *Statutes*, should they not do *Right*?
They are not the *Rule* of *Right*. But are to
be *Judged* by a *Seperior Rule*, of *Reason*, *Justice*,
and the *Law* of *God*. Some think *England* the
Original of *Government* to all the *World*, and
that ther were *Acts of Parliament* before the
Creation— But it must be brought down, and
made to Submit to those *Rules of Government*,
which *God* has given to all the *Earth*. Other-
wise, it may Force my *Submission*, but can ne-
ver Satisfy my *Conscience*. Which if you will
be so Charitable to Undertake, I desire you
wou'd

wou'd give me good *Authorities* out of the *Holy Scriptures*, and let me See the *Law of God* in the Case. I will allow the *Year Books* to Determine whether your *Cow* or mine be the *Trespasser*, and who shall make up the *Fence*. But if they talk of the *Right of the Crown*, or the *Nature of Government*, they Exceed their *Commission*, and what they say is of no more Weight, than what any other Persons shou'd offer upon the same Subject.

Mistake me not, as if I thought the *Laws* of the *Land* were against me in this Matter. I hope I have made the Contrary appear, and that they are on my Side of the Question. But I say, They are not the *Foundation* whence we are to Begin, nor the *Last Resort* neither, by which we ought to be Determin'd, as to the *Nature of Government*, and the *Right of Crowns*. That is Reserv'd to the *Law of God*, Whence all *Governments* Derive their *Authority*, and from which only *Kings* do Hold.

I will Conclude with this *Prayer*, wherein I hope you will Join with me,

That *God* wou'd Support the *Right*, and Redress the *Wrong*.

And give us *Grace* to be *Couragious* in *His Holy Fear*, and neither be *Asham'd* nor *Afraid* to *Repent*, *Confess*, and *Return*, whenever we are Convinc'd of our *Error*.

SUPPLEMENT.

I Put this here by way of *Supplement* to what I have said of the *Constitution*, Sect. I. N. 6, 7, 8, p. 9. to p. 17. It wou'd have been too Tedious there, and an Interruption to the Thread of the Discourse. But I think it Necessary as well for my own Vindication, as the Support of the Truth. To both which it will be a Considerable Addition, to see the same things Asserted and Justify'd by the Learned Dr. Wake (since Promoted to the See of *Lincoln*) in his *State of the Church and Clergy of England*. Printed 1703.

(1.) In which he Asserts, and comes fully in with Dr. Brady, That there were no *Commons* (as now Understood) in our *Parliaments* till the 49 of *Hen. III.* nor from that time till the 18 of *Edm. I.* So long they were Discontinued after their being first Admitted into *Parliament*. See *State of the Church*, p. 212. Again, p. 227. he supports Dr. Brady in shewing, That *Acts of Parliament* were made (particularly the *Statutes of Westminster*) and *Taxes* Raised upon the whole Kingdom by the *King* and *Lords* only. And that one or more *Knights* for the *Counties* were Return'd as the *King* pleas'd.

pleas'd. And p. 230. That there were no *Representatives* from the *Cities* or *Burroughs* in *Parliament*, but that they *Taxed* themselves separately; as they did even after they were *Summon'd* to *Parliament*, the *Communities* of *Counties*, of *Cities*, and *Burroughs*, gave each for themselves. And p. 231. That the *Bishops* and *Clergy* *Taxed* themselves, without *Conjunction* with the *Parliament*, and sitting at different *Times* and *Places*. And p. 215. That the *Clergy* of each *Diocese* being Called by their *Respective Bishops*, *Taxed* themselves in their *Diocesan Synods*, separately from those of other *Dioceses*. And in the *Appendix*, p. 8. *Num. VII.* There is a *Writ* to the *Bishop* to *Tax* the *Clergy* of his *Diocese*. And p. 7. *N. vi.* There is a *Writ* to the *Bishop* of *Worcester* to pay the 20th Part of his Goods and of all his *Villains*, and with it one to the *Sheriff* of the *County* to *Levy* it, *Manu forti*, if there were *Occasion*. And the *Reason* given was, because other *Bishops* had done the like. And the *King* had not time (being upon his *Voyage* to the *Holy Land*) to have a particular *Parliamentum* vel *Tractatum vobiscum*, a *Parliament* or *Conference* with that *Bishop*. Of which says the *State of the Church*, p. 214. concerning this *Bishop* and others in the like Case, *All the Ceremony that the King used was to send his Letters to them to acquaint them with what the others had done, and to desire them to Consent to the same.* And this was in the 54th of *Hen. III.* as in the *Teste* of that *Writ*, 5 Years after the *Commons* were first let into *Parliament*. And none of their *Consent* was had or asked to this *Tax*. It was

was Granted by the *Bishops* and *Lords* in *Parliament*, upon their own Lands, and the Lands of their *Villains*. And such *Writs* or *Letters* from the *King* were sent it seems to those who were absent, to have their Consent likewise. Which was a different Method from our *Acts of Parliament* now.

The *King* did *Parliament* or Confer with the *Bishops* and *Lords*. But when the *Commons* were first Summoned to this *Parliament* or *Colloquium* (as then called) it was not that they shou'd have any Share or Part in the *Colloquium*, or to Advise at all in it, but barely to Consent to what the *Bishops* and *Lords* had done, as the words of the *Writ* runs, *ad Consentiendum*, not to Advise, as it is in the *Writ* to the *Lords*, and to have a *Colloquium* with the *King*. And the Reason of this seems to have been a Meer *Politique*, that they might Pay their Money the more freely, having first Consented to it. But now it is Grown into a Right, and the Sole Right of the *Commons* to give Money, and the *Lords* cannot Tax even Themselves, for all *Money Bills* must now Proceed from the *Commons*, and the *Lords* only Consent, but can Alter Nothing, as it was with the *Commons* formerly. And every Speech now from the *Throne*, when it comes to the Money part, Addresses only to the *Commons*.

This of bringing the *Commons* first to Consent, was the Moderation of the *Lords*, to the End; I suppose, that the *Commons* might not Grudge at the Taxes lay'd on them by the *Lords*. But it has far'd with them as with other *Politicians*, who see not whither things will Run,
I and

and often have their own Cannon turn'd up-
on them. I will give you the Words of the
State of the Church, that I may not Mistake.
There p. 227. you will find as follows.

" The King (*Edw. I.*) being Return'd——
" Issued his *Writs* for a *Parliament* to Meet.
" The Persons called were here again *totius*
" *Regni Magnates*: The Annals of *Waverly*
" Style it a *Parliament of all the Lords*, and
" Mention not any other as either Call'd, or
" Coming to it.

" In the 18th of this King, after *Easter*, a
" famous *Parliament* was held at *Westminster*,
" in which the *Third Statute of Westminster*
" was made; and an Explication upon the
" *Statute of Quo Warranto*, as *Hemingsford* Re-
" lates it. The *Records* agree with this Ac-
" count, and will Inform Us who were Called
" to it, and Aſſed in it.

" For the *Statute of Westminster*, it is ſaid,
" that the King, *ad Instantiam Magnatum Regni*
" *sui*, Granted, Provided and Eſtabliſh'd. c. i.
" In that *de Quo Warranto*, That the King
" of his ſpecial Grace and Affection, towards
" his *Prelates, Earls, Barons, and Ceteros de*
" *Regno ſuo*, Granted, &c. But there is ano-
" ther *Record* that will ſpeak more plainly
" in this Caſe. For on the firſt of *June*, the
" *Prelates, Earls, Barons and Great Men* of the
" *Kingdom*, with one Aſſent in full *Parlia-*
" *ment*, granted to the King for *Theſelves*
" and the *whole Community* of the *Kingdom*,
" forty Shillings of every *Knights Fee* for an
" Aid to Marry his *Eldeſt Daughter*, as the
" Words of the *Roll* are.

This

“ This *Parliament* first met after *Hilary*,
 “ *Anno* 1289. It Re-Assembled after *Easter*;
 “ and on the first of *June*, Granted the Aid
 “ I before Mentioned. Upon the 14th of
 “ *June*, at the Request of the *Lords*, and
 “ *Great Men* there Assembled, the King issued
 “ out *Writs* to the *Sheriffs* of every *County*, to
 “ order *Two* or *Three* to be Chosen for their
 “ *Respective Counties*, and Returned up to
 “ this *Parliament*, (which was then sitting, and
 “ had sat so long, and done so much Business
 “ without them) within *three Weeks* after the
 “ Feast of *St. John Baptist*, *July* the 15th.
 “ Before they came, the King, with his *Lords*
 “ only, made the *Statutes* of *Westminster* be-
 “ fore Mentioned; which were passed in *Par-*
 “ *liament* the xvth of *St. John Baptist*, that is
 “ to say, *July* 8th. The *Knights* being thus
 “ Summoned for the several *Counties*, were
 “ Returned accordingly; from some *Three*,
 “ from others *Two*, as the *Sheriffs* thought
 “ fit; Which shews this Matter not to have
 “ been yet come to any Certain Establish-
 “ ment. They were design’d to Represent
 “ all the *Military Tenants* of the *Counties* in
 “ *Capite*; and they did accordingly Consent
 “ for them to a xvth then Granted, per
 “ *Archiepiscopos*, &c. by the *Archbishops*, *Bishops*,
 “ *Abbots*, *Priors*, *Earls*, *Barons*, et *Omnes Alios*
 “ *de Regno*; the very Style that was used
 “ when the Body of those who held by
 “ *Military Service* were Personally Summon-
 “ ed, according to the *Charter* of King
 “ *JOHN*.

This *Charter* is set down p. 191. and expressly Limits the *Commons* who were to sit in *Parliament* to those only who Held of the King in *Capite*. And these were to be *Summoned* by the *Sheriffs*, (as the *Peers* were by the King's Letters) not Chosen by the *People*. For after Naming the *Lords*, who were to be Summon'd *Singillatim, per Literas Nostras*, it is added, *Et prateria faciemus Submoneri in Generali per vice Comites et Ballivos nostros, omnes alios qui in Capite tenent de Nobis*. This shews what the *Omnes alios* was, who, besides the *Lords*, then sat in *Parliament*.

(II.) These Authorities are Deny'd by none, nor have been Attack'd by any but *James Tyrrell Esq*; in a long *Appendix* to the *Second Part* of his *third Volume* of the *General History of England*, Printed 1704. Wherein he Attempts to Answer what *Sr. Henry Spelman*, *Mr. Prynne*, *Dr. Brady* and *Dr. Wake* have Wrote upon this Subject. He owns they have Quoted the *Records* truly. Only he wou'd put another Sense upon them. But I must take Notice.

1. That he is not so Positive to say the Sense he puts upon them, is the True Sense of them; but that it *May be so*, and *If it be so*, and *Perhaps* is so.

2. Thence he Concludes, That *Perhaps* by the Words *Principes, Proceres, Magnates, Optimates, Barones, &c.* Not only the *Lords*, but the *Commons* too *May be Meant*. And he must Mean it

it as Low as those very Poor *Commons* who have *Votes* in the *Elections* for *Parliament-Men* at this Day. Else he cannot Maintain our Present *Constitution* of *Parliaments* to be the same it was from the Beginning; which is the *Point* he Labours. And it will take more than a *Perhaps* to shew, That these were Called the *Princes*, the *Great Men*, and *Barons*, and *Lords* of the Nation! If he can Confound *Words* at that Rate, his *History* will not be very Intelligible.

But the Method he takes is to go to *Littleton's Dictionary*, which he Quotes p. 77. and there tells us how many ways these words are *Englised*. That *Principes* signifies not only *Princes* by Birth, but *Chief* or *Principal Governors* or *Magistrates*. And if you should ask, where? He Explains it, in any *City*, *Nation*, or *Kingdom*. Then (says he) for the Word *PROCERES*, it is Render'd in our *Dictionaries* (and puts *Littleton's Dictionary* on the Margin) the *Heads* or *Principal Men* of any *City* or *Commonwealth*. And so for the Words *Optimates* and *Magnates*, which (says he) Signifies not only *Noble Men*, but such *Chief* and *Principal Men* as before. And if he will look the Word *Nobilis*, he will find in his *Dictionary* that it signifies not only *Noble* by Birth or Creation, but *Excellent*, *Famous*, *Remarkable*. And also a *Noble*, *Six Shillings and Eight pence*. And then we shall find a Great many *Nobles* in *England*! And yet many of our *Ele7ors* not Worth One. And who cannot come in under the Lowest *Sense* that any of our *Dictionaries* give of *Principes*, *Proceres*, &c. But Mr. Tyrell

Supplies this with a *Suppose*, and says *ibid.* Which Terms may (*I Suppose*) as well take in the Knights Citizens and Burgeses, as the Inferior Tenants in Capite. But what signifies all this? For the Greatest Part of our Electors are no Tenants in Capite at all, neither Superior nor Inferior. What a Pity it is so much Pains shou'd be taken to so little Purpose!

3. But he has a Reason which Forces him to all this, and he begins his *Appendix* with it, p. 2. where he says, *But how they* (the Under-Tenants to the Tenants in Capite) could be so Obligated (that is, to have Taxes lay'd upon them) *Unless they were some way or other Represented, I can by no Means Understand.* This is a Foundation Maxim with the Orators for the Power of the People, and their being the Original of Government, That None can be Taxed but by his own Consent. And rather than Depart from this, they will by Princes Mean Coblers, and leave no Word of any Signification! But this it self will not do it. For how do they Consent who have no Votes in the Election of Parliament-Men? And these are much the Major Number of the People. And some of them too the most Considerable for Riches, and most Beneficial to the Nation in Trade, &c. But if they have not a Freehold of Forty Shillings a Year, they have no Votes. And all they have may be Given away by Men who Clean their Shoes!

As to the Imply'd Property and Authority of those who have the Terra Firma, do's this Reach only to the Ter-Tenants, or those who Labour

Labour the Ground with their own Hands ? But if the *Land-Lords* have a Superior Property, the *King* is the *Supreme Land-Lord*, for all the *Lands* are Held of Him, and are *Forfeitable* to Him. Yet these Men who Cry out against the *King* having Power to *Tax* those who Hold of Him, give to *Freeholders* of *Forty Shillings* a Year a Power to *Tax* those who Hold of them, and all the Rest of the *Nation* too who do not Hold of them ! And this, by I know not what, *ImPLY'd Consent*, when ther is no *Consent* at all Given. But, Mr. *Tyrrell*, the *People* are *Tax'd* not by their own *Consent*, but by those who have *Authority* to *Tax* them. And it is not a Farthing Matter whether they *Consent* or not. Ther are many in *England* wou'd not pay *Taxes* now if they cou'd Help it. And if they were to be *Polled*, wou'd *Perhaps* be the *Major Part* of the *Nation*.

And is not the *Major Part* of the *People* the *Original* of *Government* ? And must not the *Freeholders* derive their *Authority* from *Them* ? How else came they by it ? You must shew then *When* and *How* the *People* did Impower the *Freeholders* to *Vote* for *Them*. And that they Limited it to *Freeholds* of such a *Value*, and Excluded all the Others. And may not the *People* Recall that Power they gave to the *Freeholders*, if they Abuse it ; as well as what they Entrusted with *Kings* and *Parliaments* ?

Sir, I find you are at a Puzzle whether *Kings* or *Parliaments* were first ? For you say in your *Preface to the Appendix*, p. 2. That *Great Council* must have been before, or at least

as *Ancient as Kings themselves*. But why are you in this Doubt? For *Kings* and *Parliaments* did not Start out of the Ground both together. One must be before the Other. Because one must Make the Other. Either *Kings* made *Parliaments*, or *Parliaments* made *Kings*. If the latter, then you are to shew that *Parliament* which made the first *King*, And tell us by whom it was *Called*, and by whose *Authority* it Sat. &c.

I intend not to go over Mr. *Tyrrell's Appendix*, which is a large Book by it self. But all his *Answers* being the same, and within the *Topicks* I have before set down, I will give the Reader one Instance or two, by which he will know all the Rest, as much as if had Read them all.

At the end of p. 13. he comes to Answer an Authority produc'd by Dr. *Brady*, where a *Tax* was Granted to the *King* by the *Magnates* and *Fideles*. Which I suppose, says he, *May be* better urged to the Contrary. Then p. 14. he plays upon the Word *Fideles*, and Proves that the Meanest of the *Commoners*, those under the Tenants in Capite, *May be* Comprehended under the Signification of this Word, for may not a *Mean* Man be *Faithful*? And for this he Quotes the *Glossary*, that *Fideles* Signifies *Faithful*. But then he brings to his Aid *Walter of Coventry* the Historian, who Reckons the Members of this *Parliament* to Consist of the *Archiepiscopi, Episcopi Abbates, et Proceres Angliæ*. And with the Help of I suppose, he finds the *Inferior Commons* here too. For, says he,
 "Un-

“ Under the General word *Procures* in this
 “ Historian, and *Fideles* in the Record, I sup-
 “ pose not only Tenants in *Capite* to be here
 “ Understood, but their inferior Tenants, or
 “ their Representatives, are Comprehen-
 “ ded.

Then he goes on in the same Page to another *Instance* brought by Dr. Brady in the 8th. of Hen. III. where a *Carucage* of two Shillings of every *Plough* throughout all *England*, was given to the King in *Parliament*, where were Assembled the *Archbishops*, *Bishops*, *Earls*, *Barons*, and *Multis aliis*. “ From whence
 “ (*says he*) the Doctor Collects, that the *Alii*
 “ *Multi* above Mentioned, were the *Abbots*,
 “ *Priors*, and other *Lay-Tenants* in *Capite*:
 “ But I think we May well understand these
 “ Words to Extend not only to the Te-
 “ nants in *Capite*, but to other inferior Te-
 “ nants, by whatsoever free Service, who were
 “ there by their Representatives. For how
 “ otherwise (as I said before) could a gene-
 “ ral *Carucage* upon all the *Plough-Lands*
 “ throughout *England* be Legally imposed?
 “ Since the great *Prelates*, *Earls*, *Barons*, and
 “ Tenants in *Capite* cou’d never Represent
 “ the Tenants of such *Abbots* and *Priors*, who
 “ held their Lands in *Frank-Almoign*, and
 “ not in *Capite*, and so were not Summoned
 “ to this *Parliament*; as also all Tenants in
 “ *Ancient Demesne* and by *Socage* and *Burgage*
 “ Tenures; and lastly, Tenants by *Petty Ser-*
 “ *jeantry*, and those who held Lands of the
 “ King by *Fee Farm*, paying a Certain Rent:
 “ All which, together with their under-Te-
 nants,

“ nants, could never be Taxed or Rated by
 “ those who were none of their Chief Lords;
 “ since upon these Gentlemens Principles,
 “ whom we Oppose, the only Reason why
 “ the Tenants in *Capite* could grant Taxes
 “ for their Under-Tenants, was, that hold-
 “ ing their Lands of them in Fee, they did
 “ in some manner Represent them, and were
 “ Bound by their Acts: They could never
 “ Represent or Dispose of the Estates of those
 “ who had no such Relation; and therefore
 “ by these *Multi Alii* must be meant other
 “ than meer Tenants in *Capite*.

Thus Mr. Tyrrell. I have given his Words
 at Large, that he may not say I mistook his
 Meaning. All his Argument is Built upon
Representing, that none can be *Taxed* but by
 their *Representatives*. Whereas he must know,
 That the far Greatest Part of the People of
England have no *Votes* in the Choice of *Parlia-*
ment-Men, and so are not *Represented* at all.
 Yet they are *Taxed*.

And as for his saying, That People are in
some Manner Represented by those of whom
 they hold in *Fee*. I wou'd be Glad to know
 his Meaning. Do's every Man of whom I
 hold a piece of Land in *Fee* *Represent* me,
 and am I *Bound* by his *Acts*, so that he may
 Dispose of me, my Life and Estate at his
 Pleasure? If that be true, then the *King* may
 Dispose of all the Men in the Nation who
 have any Land in *Fee*, because they all Hold
 of Him, and He *Represents* them all.

And if the *Multi Alii* here, and the *Omnes*
Alii in the Charter of King John, mean All
 those

those who are *Taxed*, besides the Tenants in *Capite*, it will make a large *Army* of our *Parliament*! And if you will go to the *Dictionary* to know what *Omnes Alii* Means, it will tell you that it signifies *All others*, and so you may bring in every Man in the Nation! But can any thing be Plainer to shew what is meant by *All Others* here than this *Charter* expresses it, when it says, *All Others* who hold of *Us* in *Capite*? Yet Mr. Tyrrell will not have it so, but in this same place, p. 15. he Quotes Dr. Wake's *State of the Church*, and the same Page of it where this *Charter* is Inserted, p. 191. And Disputes against it for this Reason, because (says he, very Respectfully of the Doctor) "Had he been a little better Versed in our
 " Records, he would have found that under
 " *Magnates*, the Knights of Shires, called *Grantz*
 " *de Countees* in *French*, are often Compre-
 " hended, as well as the *Earls* and *Barons*. No doubt ther are Great Men among the *Commoners*. And the *Knights* of *Shires* were then the *Grantz* or *Great Men* of the *County*. But what is this to the poor Creatures that Vote in our *Elections*, to the Tag Rag and Bob-Tail Shouting in *Tuttle-Fields*? You must make all these *Grantz* too, to find a Precedent for them in our *Records*.

But ther is part of the Case yet behind. As this *Parliament* gave a *Carucage* to the *King*, so He granted to His Great Men a *Scutage*, viz. of every *Knights Fee*, two Marks *Sterling*. To which Mr. Tyrrell says, *ibid.* p. 15.
 " That it had nothing to do with this *Tax*,
 " neither did it extend to all the Sub-Te-
 " nants

“ nants by Military Service, but only to such
 “ of them as had been spared from performing
 “ their Services at the Siege of *Bedford-Castle*,
 “ the *King* by his *Prerogative*, granted the
 “ Lords *Writs* or *Warrants* to receive Service
 “ from all such Tenants proportionable to
 “ the Time their Lords had been in the
 “ King’s Service, sometimes one *Mark*, some-
 “ times two or three, as Dr. *Brady* acknow-
 “ ledges.

This Mr. *Tyrrell* thought an Answer to Dr. *Brady*. But whither has he brought himself, to say, That the *King* by his *Prerogative* may *Tax* the *People*, or such of them as He pleases?

I suppose the Reader will Excuse me not to go further with Mr. *Tyrrell*. He is all of a Piece. But it wou’d not have been Fair to Conceal the Strength of the Objections made against our *Constitution*, which Mr. *Tyrrell* has taken great Pains not to Understand.

Adver-

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Concerning the Benefit the
Government receives by *Ja-*
cobite Converts.

IN all *Revolutions* ther have ever
been *Dissatisfy'd* persons. And no
Change of *Principles* becomes Universal
at the First. It must take Time and
Patience to Wear out old *Prejudices*.
And it is Natural to give *Reasons* for ones
Change, that he may not seem *Byass'd* by
Temporal Interest, when he go's to the
Stronger Side.

Of this sort we have had but *Two*
since the *Revolution*, Dr. *Sherlock*, and
now Mr. *Higden*. The *First* Perplex'd
the Cause, and Shook the *Principles* of
the

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the *Revolution*, nor has the *Latter* come up to them. And both have given Occasion for more *Objections* against the *Establishment* than We heard from the *Jacobites* before.

Mr. *Hoadly* has long Pursued the Lord Bishop of *Exeter* for *Assuring the World* (as he says) that her Majesty's Title is only that of a *Successful Usurpation*. Which he wou'd draw as a Consequence from his Lordship's Principle of *Non-Resistance*. But Mr. *Higden*, without the Trouble of Consequences, openly Maintains the Title of a *Successful Usurpation*, and gives her Majesty no other Right or Title whatsoever. And to Prove this upon her, is the Business of his Book.

This is all she Gets by the *Jacobite* Converts! They *Expose* her to *Excuse* themselves. It is Impossible for a *Jacobite* to be a real *Convert*! Something still Sticks with them, and they cannot Help it! They are only Dangerous when they play the *Hypocrite*. And they think the *Government* ought to Thank them for Proving it an *Usurpation*!

Let

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Let Us have no more of these *Converts*, at least no more of their *Reasons*. But if they will come in, let them come Modestly without *Reason*!

The *Jews* compassed Sea and Land to make *Profelytes*, But they had a *Maxim*, Not to Trust a *Convert* to the third Generation. For they made him Twofold more than themselves.

FINIS.

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There is no more of these things
and at least no more of them in
the future if they will come in
the future.

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